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Vol. II

TRANSCRIPT OF RECORD

(Pages 111 to 334)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.

1 In the District Court of the United States For the District of Columbia

Holding a Motions Court

Civil Action No. 37,764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *November 27, 1946.*

The above-entitled cause came on for hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the Attorney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

2 On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street, NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 13th Street, NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

3 PROCEEDINGS

The COURT. You may proceed, gentlemen, when you are ready.

(Thereupon, there was a conference at the bench which was not reported.)

The COURT. Gentlemen, the Court in considering the matter of procedure, the Court realizes that if the Norris-LaGuardia Act applies to the present controversy, an advisory jury is not adequate. The defendants would be entitled to a jury with all the usual powers of a jury, so it seems to the Court that the first thing to be determined is whether or not the Norris-LaGuardia Act applies.

Now, as I understand it, yesterday afternoon the defendants filed a motion——

Mr. HOPKINS. We did, sir, a motion to vacate and discharge the rule.

The COURT. A motion to vacate and discharge the rule, and in this motion the question of the applicability of the Norris-LaGuardia Act is involved, and also other matters, which I have not familiarized myself with. So, unless there is some reason that counsel on one side or the other can give why it should not be done, it seems to me

that the first thing for the Court to consider this morning is the motion to discharge and vacate the rule to show cause.

Mr. HOPKINS. We agree, Your Honor.

4 The COURT. I will see what counsel for the Government says.

Mr. HOPKINS. Oh, pardon me.

The COURT. Any objection to that procedure, gentlemen?

Mr. SONNETT. We respectfully submit this, the Government's view is that it would be appropriate for the Court to reserve decision on the question of the application of the Norris-LaGuardia Act until after the completion of the hearing and the taking of the proof which the Government is ready to offer this morning.

Our reason for that, among others, is that we do not believe that under Title 28 of the Judicial Code, and specifically Section 389 of the Code, where the proceeding is initiated by the United States, there is any question of jury trial as a matter of right on the part of the defendants.

The COURT. Well, of course, if the Norris-LaGuardia Act applies, the defendants would be entitled to a jury trial, absolutely.

Mr. SONNETT. That would be true, Your Honor, of course, if the section of the Norris-LaGuardia Act applied which set forth the procedure on the determination of a contempt. However, should Your Honor hold that the Norris-LaGuardia Act applies at all, I would presume that Your Honor would also hold that the earlier

5 section of the Norris-LaGuardia Act applies, which provides, in substance, that actions such as that taken by the defendants would not be enjoinable, so that in our judgment, and we respectfully submit it to Your Honor, we think it would be in the interest of orderly procedure and the more adequate determination of all of the issues in the case if we were to proceed with the hearing and Your Honor reserved the legal questions until the conclusion.

I may say as to the hearing, that the Government's intention, with the Court's permission, is to present some—in the neighborhood of ten witnesses, each of whom will be a short witness, each of whom would offer evidence relevant and competent on the issues before Your Honor, whether they are with regard to issues under the long settled equity practice; whether they are with regard to issues under the Norris-LaGuardia Act, or whether they are regarded as issues under the Judicial Code.

The COURT. What is your view about the Court's determination as to the jury, until the question of the Norris-LaGuardia Act is disposed of?

Mr. SONNETT. I think if the Norris-LaGuardia Act is applicable, the Court need not reach the question of any trial, because, if the Act is applicable, why, it would render lawful the action taken by these defendents which is set forth in the Government papers.

6 The COURT. The Court does not think that, sir. The Court thinks that the Court is the judge of its own jurisdiction, and that even if the Norris-LaGuardia Act applies—this is tentative—even if the Norris-LaGuardia Act applies, the offense of contempt would still have been committed, although the penalty might be very different.

Mr. SONNETT. To which view, of course, the Government subscribes, as we set forth in our brief filed at the last hearing, but because the Court has a ground of jurisdiction here, irrespective of the application of the Norris-LaGuardia Act, that we think this would not be prejudicial to the defendants in the slightest if the Court should reserve decision of the legal questions until the completion of the proof which the Government offers.

The COURT. If the Court took that view, what should the Court decide to do about the jury; whether the jury should be an advisory jury or whether it should be a jury with all the rights and powers that they usually have?

Mr. SONNETT. In our judgment, if the Court please, since there is a specific provision of the statute pursuant to which a contempt proceeding, initiated by the United States, there is no right to have a jury trial, I think that, as a matter of right, the defendants are not entitled to the trial by a jury under any construction of the law. However—

7 The COURT. Even though the Norris-LaGuardia Act applies.

Mr. SONNETT. Even though to some extent the Act would apply. However I must suggest this, to Your Honor, most respectfully, that the Government is prepared, if Your Honor so desires, to proceed whichever way the Court desires. If Your Honor desires to proceed first on the argument of the legal question the Government will be happy to offer such argument.

Mr. HOPKINS. May it please Your Honor, the defendants on yesterday having filed a motion to vacate and discharge the rule, it occurs to the defendants that the suggestion as first announced by Your Honor, to-wit, that you dispose of that matter is the proper one. We have this morning served upon Government counsel a memorandum in support of the motion to discharge and vacate. I should like to file with the Clerk now copies for Your Honor and for the Clerk's files. We believe, sir——

The COURT. The Court thinks it is proper for the Court to observe at this time, because counsel may in the future desire to file memoranda, that they ought to be filed and exchanged at the earliest possible opportunity. In this instance, as I understand it——

Mr. HOPKINS. If you will pardon me——

The COURT. The Government has had no opportunity at all to examine the brief.

8 Mr. HOPKINS. Your Honor, we are thoroughly in accord with that, sir. We found ourselves in extraordinary difficulty just as the Government did on Monday, that they were unable from the expenditure of time and effort to serve us until we were in the courtroom, and I say to Your Honor it was 1 o'clock this morning until this was completed.

The COURT. It does not apply to one side alone, sir.

Mr. HOPKINS. We will undertake to expedite and complete at the earliest possible moment.

Inasmuch as this motion is pending, Your Honor, we feel that the point was well taken that would perhaps lead Your Honor to an early conclusion upon the subject. We respectfully suggest to you, sir, that the procedure you have outlined to-wit, to proceed upon the argument

of the motion to discharge and vacate is not only acceptable to the defendants, but we think entirely proper, if it meets with Your Honor's approval.

Mr. SONNETT. If the Court please, there has been some discussion between counsel on the question whether, in any event the defendants desired a trial by jury, no matter what their legal rights might be, should the defendants not desire a trial by jury, assuming that they are entitled to one as a matter of legal right, we think the question becomes moot at this time, and accordingly ultimate decision can be reserved until after hearing.

9 I don't know that Your Honor should properly be guided by a consideration of the Norris-LaGuardia Act at this time. If the defendants, in any event, do not desire to avail themselves of whatever procedure and advantage they might have under the Act, I would respectfully suggest that Your Honor ascertain whether the defendants would desire a trial by jury, if the Norris-LaGuardia Act were held applicable.

10 The COURT. Now, Section 111 of Title XIX of the United States Code Annotated reads as follows:

"In all cases arising under Sections 101 to 115 of this Title"—That is the Norris-LaGuardia Act—"in which a person shall be charged with contempt in a court of the United States as herein defined, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the contempt shall have been committed."

Now, I presume that defendants can waive their right if they see fit. There is probably no question about that.

Mr. HOPKINS. Your Honor, I am not prepared to waive the question of the trial by jury at this time. It is only right to say that it might be a matter of consideration by the defendants later on. But we are no prepared to waive it, sir, and we feel arguments upon the motion would be the proper procedure to meet your Honor's approval.

The COURT. Proceed, sir.

Mr. HOPKINS. If it please your Honor, in that regard, the questions involved in the motion are set out in five points, as your Honor has observed. The memorandum that we have filed with your Honor is in full support of all those points. Because these points are varied

11 and there are many questions, perhaps, that would and will arise in the discussion legally of the several points, it is the desire of counsel for the defendants, in order to save the Court's time and for usual reasons, if the Court be amenable, to reserve the right to allocate the argument among the defense counsel on the various points.

The COURT. That is perfectly satisfactory.

Mr. HOPKINS. That being the case, your Honor, we should like to ask Judge Padway—Joseph A. Padway—to present the argument for the defendants at this time on Points 1 and 5.

The COURT. All right, gentlemen. But just one minute.

As far as I know, we will have Court here on Friday. It has been suggested that Court be held tomorrow, but I have been in consultation with the Chief Justice, and he agreed with me that some years ago we made careful exploration of the law and reached the conclusion that it is not legal to hold a proceeding of this kind on a legal holiday.

That makes it impossible to hold any Court tomorrow. I mention that only because it has been discussed.

Now, will you proceed, Mr. Padway, please.

12 / STATEMENT OF MR. JOSEPH A. PADWAY

Mr. PADWAY. May it please the Court, our motion is premised primarily on the fact that the Court had no jurisdiction to issue a restraining order in the first instance.

Now, that is premised on the fact that the Norris-LaGuardia Act is applicable to this proceeding which involves a labor dispute as defined in that act. Now, if the act covers this dispute—the nature and character of it—and if it is a dispute as defined in the act, and if the Court—the Government, rather—is a party to this proceeding and bound by that Act, then the Court had no jurisdiction to issue the decree in the first instance.

It is not necessary, for the purpose of presenting that argument, to go into the merits and the issues as set forth in the complaint. By that I mean whether or not a contract had been entered into between Mr. Krug and Mr. Lewis for the respective organizations.

The COURT. The Court agrees with that.

Mr. PADWAY. So I shall not trespass, unless it becomes necessary for the purposes of continuity in the argument at this phase of the case, on the facts in issue set forth in the original proceeding and the complaint filed.

Now, it is well, I think, in a proceeding of this nature, that has
13 such serious implications, although in doing so the Court may be familiar with what I am going to say, but I think it will bear repetition, to review briefly the history of the Norris-LaGuardia Act.

The COURT. Mr. Padway, this is a matter which requires most careful consideration by all of us, and your time will not be limited. Proceed in your own way.

Mr. PADWAY. I appreciate that very much.

The Norris-LaGuardia Act came to the attention of Congress in 1927, I believe. It came to the attention of Congress because there was a great hue and cry against the issuance of injunctions in labor disputes by the Federal Courts. It was distinctly and avowedly aimed at the procedure adopted by Federal Judges with respect to injunctions in labor disputes.

That was not new, in 1927, because in truth and in fact, however, there had been an outcry against what is commonly or was commonly termed government by injunction as far back as 1907, perhaps earlier than that, but it may not have been of such public interest as it was at that time.

In 1907, I think, as a result of forces in this country—labor and others who were opposed to the injunctive device in the particular instances in which it was used,—and more energetically on the part of Theodore Roosevelt, who urged seriously that government by injunction should be abolished. Joined with him, as I recall, was
14 Robert M. La Follette, then United States Senator from the State of Wisconsin.

The matter came to the attention of the public and to the various political parties, then as now dominant in this country. It is significant that in the platforms of the Republican Party and the Democratic Party in 1912 there were contained planks on the part of both, portions of which I shall read later, agreeing, or at least promising, that government by injunction would be curbed—either limited or entirely abolished.

As a result of the promise made in the political platform of the Democratic Party, and when Mr. Woodrow Wilson became President of the United States there were introduced in Congress amendments to the Anti-Trust law—to the Sherman Act of 1890. These amendments took the form of the Clayton Act, sponsored, I presume, by Mr. Clayton, and receiving his name.

There were two sections in those amendments in the Clayton Act that have particular significance to the argument I am addressing to the Court this morning. There was what was known as Section 6, which made this definite statement. It may not be as definitive as this other statement, but it was in the nature of a declaration, and the opening phrase is that the labor of a human being is not a commodity or an article of commerce.

15 True, in that respect, that section at that time had application only to antitrust laws, but its significance is in this: That Congress intended to distinguish between the labor of a human being and the commodity he produced and the labor itself, the labor that goes into the commodity in its production, and, *and* after producing, the commodity itself. Congress said that that labor which was used in producing a commodity, whether it be labor of the head or mind or of muscle and brawn, nevertheless, that, in and of itself, was entitled to a separate classification, and a separate treatment by the applicability of laws expressly to that particular phase was embraced within the Act. The labor of a human being is not a commodity or article of commerce.

16 Now then, the Congress took cognizance of the fact that men who work in factories, mills, and mines are laborers; they are workmen. Men who have exercised their energy and skill in the production of a commodity are entitled to certain protective devices that were to be embraced within the Act. What were those protective devices?

Moving from Section 6 to Section 20 those protective devices are included in that section, and it is significant, if you please, to follow the language of that section because it is still applicable law. Your Honor is still governed by the provisions of Section 20 in the determination of the issue presented to you in this contempt proceeding this morning.

Section 20— and you, this is included in the antitrust laws by protective devices dealing expressly with the injunctive decree, and it was announced by the particular party who then controlled the administration that that was in fulfillment of their pledge to abolish what is known or was known as government by injunction—Section 20 of the Clayton Act states as follows: "Statutory restriction of injunctive relief.

"No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employees or between employers and

17 employees, or between employees, or between persons employed and persons seeking employment, involving, or growing out of,

a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property rights must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

"And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor"—and may I pause here for a moment to remark that the pleadings in this case, both in the original suit and in this ancillary proceeding, if it may be termed that, seek to do that very thing, namely, from terminating any relation of employment or from ceasing to perform any work or labor.

If there ever was a command to go back to work, to abstain from ceasing your work singly or in concert, this decree, the original order made by Your Honor, commands that very thing.

"or from recommending, advising, or persuading others by
18 peaceful means so to do;"—And that is precisely applicable to Mr. Lewis, who is the president of the United Mine Workers—"or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and lawful means so to do; or from paying or giving, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph"—and I shall repeat that, if Your Honor please, because up to this point we have dealt with procedural law, with what the Court shall not do in the matter of procedure, what injunctions they may not issue; but at this particular point Congress added after a semicolon this significant sentence, after it had enjoined upon the Federal Judiciary and upon private parties
in their applications the issuance or the demand for such injunc-
19 tions, it then said this—it converted all this adjective on procedural law into substantive rights by stating—"nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

What was procedural was now converted into substantive rights, substantive law, and it made these items herein referred to, such as the right to cease employment, the right to cease in concert or singly, and the right to have others, their officers, their representatives, or among themselves, if you please, go on and do these things, and it said that every man had the right—he need not be an officer of the organization; he need not be a member of the same organization—but as a citizen of the United States he had the actual right to advise and encourage and induce and persuade by peaceful means any person to join with them or to do the things that are herein referred to, namely, the cessation of employment, singly or in concert. Those become substantive rights, and although it became substantive that law was still the law of the United States.

Now then, strangely enough—I might even say not strangely enough—the courts had exercised such great and extraordinary power when this Act came down—and I do not say this disparagingly of the judiciary; I merely state it as a fact—they were reluctant to release the exercise of the powers that they had exercised prior
20 to this particular enactment. They were desirous of continuing to do the things that they had done, and issued decrees they had previously issued. And so by clever argument on the part of counsel they were induced to say that this enactment was nothing more than a restatement; it had always been the law, and being so, having developed that, it was easy for them to hark back to the former precedents and each precedent prior to the enactment of this law and utilize them and continue in the same manner as they had acted and had proceeded prior to the enactment of this law.

That was very significant and, and as I will point out when I come to the discussion of the Norris-LaGuardia Act, emphasized as an activity or a procedure on the part of the judiciary that was wholly unwarranted.

What cases were there in which that was outstanding? Well, there are three cases that demonstrate the point that I am making, which is that the judiciary gave no credence and no support and they refused to accept this enactment.

One case was the Tri-City case. In that case there was a strike in Illinois, a foundry strike, and there Justice Taft writing the opinion curtailed the powers of picketing.

He assumed in that case that picketing in and of itself was an evil, much as the statute said that if it is peaceful, if its purpose is to persuade and induce others to join the ranks and assist them in
21 the particular controversy they have, nevertheless Justice Taft held that in a strike involving some 1,500 persons three pickets were sufficient, one at each entrance. He didn't like the term "picket"; said it was a military term; it denoted soldiering and militarism, and gave them the rather euphemistic and rather poetic term of "missionaries." Three missionaries, he said, would be enough in this particular place.

In other respects he curtailed their rights again, and the Tri-City case is analyzed in the Congressional committee report in support of the Norris-LaGuardia Act and severely condemned.

The next act on the part of the judiciary and those who came before the judges to oppose the full efficacy of this law was another development, namely;

Well, suppose this is the law, they said, and the judges are bound by it, in what class of disputes and in what nature is the judiciary enjoined from the issuance of these injunctive decrees? In labor disputes. And then arose the question what constituted a labor dispute, and in the Duplex Printing Company case—the name of the judge who wrote the opinion escapes me for the moment—but by a divided court it was there held that the dispute had to be one of employer and employees who stood in proximate relationship with respect to master and servant.

22 My associate reminds me, I think it was Mr. Justice Pitney in that case. He held this: That where there was a strike of machinists called by the International, in connection with the construction, the building and maintenance of printing presses, and these presses came, let us say, from the place where they were manufac-

tured, which was Grand Rapids, Michigan, to New York, and the New York members of the same union called upon to erect those presses refused to do so, the court held that they were not parties to the dispute; that they had no interest in the matter, and by injunction compelled them, also in the negative as this injunction is, to refrain from ceasing employment or refusing to work on those presses.

In all the history of labor, if Your Honor please, with the exception of one case, has there ever been such condemnation on the part of Congress as there was in connection with the issuance of that injunction.

The next case which classically portrays the point I am making was the Bedford Stone Company case, another Taff-Vale decision like that of England which almost wrecked the Government of England then in power and which has since been repudiated—in the Bedford Stone Company case, men were on strike in Bedford, Indiana, in the quarries, and there the stone was shipped again to places like New York, and particularly Colorado, since that is mentioned in the opinion, and when the stone came to Colorado members affiliated with the same
23 union, interested in the same problem, governed by the same rights and interests, refused to work on that stone, and the United States Supreme Court ruled that the men could not quit in concert and had to remain at work regardless of Section 20 of the Clayton Act.

That decision—as I said before it was an exception to the Duplex Printing Press Company case—was the one that was most severely condemned. To compel men to return to work or to refrain from seeking employment was shocking.

And there were, I think, three or four dissents—the then, or for all time, the great liberals on the Court, Justice Holmes, Justice Brandeis and I believe Justice Clark—there may have been one other; it may have been a 6 to 3 or a 5 to 4 decision; since these dissents have now become the law by the majority of the Court, I will ask your indulgence to read this very significant statement on the part of Justice Brandeis. He said:

"Members of the Journeymen Stonecutters' Association could not work anywhere on stone which had been cut at the quarries by 'men working in opposition' to it, without aiding and abetting the enemy. Observance by each member of the provision of the constitution which forbids such action was essential to his own self-protection. It was demanded of each by loyalty to the organization and to his fel-
24 lows. If, on the undisputed facts of this case, refusal to work can be enjoined, Congress created by the Sherman law and the Clayton Act an instrument for imposing restraints upon labor which reminds of involuntary servitude."

25 Mr. PADWAY. How well does that fit within the facts, or, rather, the request for an injunctive decree in this case?

This Court has been asked to issue a decree, and the decree, read in the light of its language, does just that very thing; it creates—rather [reading]:

"If on the undisputed facts of this case, a refusal to work"—and that is just exactly what they seek here. They seek to call off orders, not for the purpose of having an insignificant or inconsequential act performed, but to compel men, who, at least as far as they believe, for

just grievances, have ceased to work, to go back or abstain from not working. [Reading:]

"Refusal to work can be enjoined. Congress created by the Sherman Law"—and it makes no difference whether it be the Smith-Connally Act or any other law which they passed before or since this decision—"Congress created by those laws an instrument for imposing restraints upon labor which reminds of involuntary servitude."

Now, these decisions aroused right thinking people in this country. It aroused Congress. For a time there was considerable discussion concerning it, and then, in all such circumstances or historical
26 events of moment or consequence, they having been discussed for some time, it cools off and very little is done.

But then came the 1922 strike, and the railway shopmen's strike, before a Federal Judge, at the behest of the Attorney General, behest of the Government, as in this case, presented an injunctive decree, and it was signed by a judge—Judge Wilkerson at Chicago—and that decree containing many of the things that are in this decree before this Court, and other matters besides, was the pattern, if your Honor please, for the issuance of in excess of 350 other injunctions, and every one of them ex parte.

That really brought into play and into discussion "Where are we going to?" "What will this lead to?"

350 pleadings, all mimeographed and on the same pattern; 350 decrees issued by Federal Judges throughout the country, all of the same pattern and containing the similar restraints, and the country became aroused; and then the discussion continued and became so forceful that it led to the introduction of a bill in Congress in sometime of 1926 or '27, at least early in '27, a bill which was then known as the Shipsted bill.

Senator Shipsted, of Minnesota, introduced that bill. He worked in that bill with a gentleman whose name is revered in labor, and who did much for the people he represented, and he was a Norse-
27 man, Andrew Volstead, who represented the Seamen's Union in this country.

He brought them out of the depths of degradation and made of a sailor, at least, a human being.

Now, Shipsted went to work on that bill, and, in the discussion of it, it was soon found that it was inadequate. The attempt was well, but the inadequacy of the provisions required more study and the framing of a different bill.

There was then called in a number of persons to testify respecting matters that had—or experience—brought to the attention of these persons as the result of injunctive decrees in labor disputes. I think the hearings were continued for about 4 years. It was my privilege at that time as general counsel of the Wisconsin State Federation of Labor, representing some of the unions, to be called before that committee to express myself respecting the law as we had in our State at that time, which we considered very liberal, and also with suggestions to afford suggestions respecting a bill.

My testimony may not have been of consequence, but there were persons of consequence who were students of the subject, and who were able to enlighten the committee.

The subcommittee in the Senate was headed by Senator Norris. The Subcommittee of the Judiciary Committee in the House
28 was headed by LaGuardia; and thus the bill took the name of the Norris-LaGuardia Act.

Four years that bill was under discussion, and no particular group or person who had something to say was refused his say.

I remember in the morning of the afternoon I testified I had been preceded by Mr. Emery of the Chamber of Commerce, and he testified subsequently thereto.

It was thoroughly discussed and thoroughly considered, and then in 1932, by almost a unanimous vote Congress adopted that bill, and it was signed in 1932 by President Hoover.

Now, I may, at this moment, without undue modesty, say that Wisconsin had preceded the United States and was the first State to adopt a Norris-LaGuardia Act, and thus it was my privilege to have assisted in the framing of it and appearing before its legislative committees in an effort to have it passed in that State. I was then practicing law in that State.

Now, the Norris-LaGuardia Act is premised not only on "don'ts" and "inhibitions," but it had a real philosophy, if the Court please. It had a philosophy of equalizing the respective powers of employer and employee which has been the foundation stone of much legislation enacted in recent time. It recognized the weakness of employees and even their organizations to cope with the rights which were
29 then accorded employers to discipline, discharge, and to do what they pleased with the aid, if you please, by the aid of the federal judiciary.

Now, I do not intend to make general statements respecting the judiciary, the federal judiciary, at that time. Congress did that, and in all the history of judicial bills and jurisdictional matters of that classification which came in the nature of bills before Congress, never was the federal judiciary castigated as it was by the respective committees with respect to activities in the injunctive process.

Congress said in that hearing, and—by the way——

The COURT (interposing). Now, Mr. Padway, I was in Congress at the time.

Mr. PADWAY. I think you voted for the bill, so I think what I say cannot apply to your Honor.

The COURT. There is not any question about my voting for the bill.

Mr. PADWAY. Yes, but I am stating about the history.

Congress did well. What Congress did was to pass the bill.

Your, sir, and your colleagues, are the ones who castigated the judiciary, adopting that report, which was adopted almost
30 unanimously. You agreed that what was then said respecting the judiciary was correct, and furthermore the base and foundation of what you said was this:

"To take the judiciary out of the injunctive process and not become an aid and a party to those who were opposed to organized labor and its demands and its disputes and its grievances,"—almost the opening phrase of the Committee's Report said:

"This bill is the so-called anti-junction bill. It is the outgrowth of years of agitation in the Congress for restriction upon the powers of federal equity courts in the issuance of injunctions in labor disputes.

"Hearings have been held by Congressional committees over a

period of years, and the facts adduced have brought about an almost unanimity of opinion that such powers of the Federal Courts have been exercised to the detriment of the public welfare and should be curbed.

And that, if Your Honor please, is why we here today are so apprehensive. That is why labor and its organizations are so apprehensive, that the Government should be the means and the instrument to return to those days that were so vigorously condemned in this Report and to again place upon the shoulders of the Federal judiciary or attempt to place upon its shoulders the sort of decree and [illegible] procedure that was so vigorously condemned by you, sir, as a member of the Congress and by the Congress of that day.

Well, what is this Norris-LaGuardia Act?

The Act is significant for its public policy. Now, in the argument presented in the brief, I get the impression—I don't know whether others do—

The COURT (interposing). You mean the Government's brief?

Mr. PADWAY. The Government's brief—get the impression as though everybody is bound by declared public policy of the Government; that what has been announced by Congress to be sound public policy and shall govern everyone is not to apply to the Executive department of the Government.

I will come to that in a moment, to the portion of the brief that I am referring to, but that, in substance, is what I consider they claim.

Now, then, public policy, I think, is binding upon the Government as well as upon its citizens, because it is the citizenry that makes up [illegible].

In the public policy—and let me say this, that it was not the fashion at that time for Congress to preface bills with preambles. It had been done before, but it was not very popular. Only when Congress wanted to make findings respecting conditions and the evils that existed so as to show the basis for the enactment of these laws, to abolish those evils, do we find preambles and policies—here is the public policy declared in labor matters.

In fact, it reads that way, Section 102, "Public Policy in Labor Matters Declared."

"In the interpretation of this chapter, and in determining the jurisdiction and authority of the Courts of the United States"—I emphasize the word "jurisdiction"—"as such jurisdiction and authority are defined and limited in this chapter, the public policy of the United States is hereby declared as follows:

"Whereas, under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize into corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representa-

tives or in self-organization, or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of and limitations upon the jurisdiction and authority of the Courts of the United States are hereby enacted."

Now, when we are dealing with the question of jurisdiction that is where we have to look to with respect to labor disputes to the Norris-LaGuardia Act, unless—and I will meet that contention later—the Government contends the Act does not apply to the Government; and I will address myself to that in a few moments.

Now, what did it say? [Reading:] "Enumeration of Specific Acts Not Subject to Restraining Orders or Injunctions."

This is Section 104 [reading]:

"No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as those terms are herein defined) from doing, whether singular or in conference, any of the following acts:"

34 Now, unless the Government is right that there is an implied exception with respect to the Government on that matter, that is binding on the Government and on everyone else, and may it please the Court, there is no exception in this Act in favor of the Government, and this is a limitation upon the jurisdiction of the Court with no exceptions whatever, and we counsel—

35 This is a limitation upon the jurisdiction of the court with no exceptions whatever, and when counsel in their brief tried to make exceptions in favor of the Government, they framed the very language in this law, because this law, if the Court please, has two fundamental purposes, one to protect the rights of labor, and the other to limit the jurisdiction of the Federal Courts, and the limitation of that jurisdiction with respect to the Federal Courts makes no exception with respect to the Government, and it does not need any. Why? The United States District Courts are the creatures of Congress; they are not, as might be termed, constitutional courts.

The COURT. Yes; they are constitutional courts.

Mr. PADWAY. Well, that is a debate that has been carried on for years, and at least so far as the Norris-LaGuardia Act is concerned, and the committee reports—I will leave the committee reports with you—it was at least stated—that may have been in error—those who stated it——

The COURT. The Supreme Court has held that they are constitutional courts.

Mr. PADWAY. I am glad to know that. That is wholly immaterial. The Constitution, as I understand it, provides for one court: The Supreme Court of the United States; and then such other courts

36 as Congress may from time to time create. That makes a constitutional court. I think Your Honor will agree with me that in creating the District Courts by authority of the Constitution, the jurisdiction in that court is just such as Congress gives to it.

Now, Congress gives to the District Courts of the United States probate jurisdiction, as it does; and gives to the United States Court in the District of Columbia divorce jurisdiction, as it does. It has

that jurisdiction. Yet the courts in the States—the Federal Courts—have no such jurisdiction; that has been exclusively left to the States. If Congress were to invest the Municipal Court of the District of Columbia or the District Court with certain powers, they would have them. Congress did, I believe, in 1912 abolish the United States Circuit Courts and made them Circuit Courts of Appeals, thus depriving them of all the jurisdiction they had. That very thoroughly demonstrated the value of the hearings and studies that have been made, which found, namely, that the limitations of the power and the jurisdiction exercised by the Federal Courts are only that which Congress has prescribed and granted to them. I will refer to that more particularly in a moment.

If Congress desired to take away from this Court the jurisdiction to issue injunctions in labor disputes, it had the right to do so. If it wanted to delimit it, it had the right to do so. If it wanted to set
37 up conditions precedent, it had the right to do so; and nowhere—I challenge counsel to produce a case that says that this Court in the appropriate proceedings, in the appropriate cases involving labor disputes, as defined in the Norris-LaGuardia Act, has jurisdiction to go beyond that Act.

It says, and just bear in mind the repetition of one line: "No court of the United States shall have jurisdiction to issue any restraining order"—and here is the jurisdiction prescribed, or rather delimited, denied, settled once and for all, with respect to the evils that were complained of—Congress said this: "And whether singly or in concert (a) ceasing or refusing to perform any work or to remain in any relation of employment."

That is the very thing we are here about. That is the heart of the issue involved in the Government's case; namely, that this court is asked to issue a decree, to issue a decree which will prohibit us from ceasing or refusing to perform any work or to remain in any relation of employment. That has been enjoined, if the Court please, in the decree which was issued; becoming or remaining any member of a labor organization or of any employer organization, regardless of any such acts of undertaking or promise, as is described in Section 103—we are not involved in that, because that is the anti-yellow-dog provi-
sion, with which we need not concern ourselves in this case—
38 paying or giving to or withholding from any person participating or interested in a labor dispute, any strike, or employment benefits or insurance, or any other things of value.

Why was Congress concerned with that? Because of the parallel history that is taking place in this court this morning; because the United Mine Workers—because the president—the then president—of the United Mine Workers, who is the same gentleman here before you this morning as a defendant, was enjoined in Indiana and other places and commanded not to pay strike benefits. As it says in the committee report, the miners could starve, the miners could drop from physical exhaustion and for want of food; nevertheless, the injunctive decrees were issued by the courts in that day, of that type and character, and we will return to them as surely as anything if the Government can sustain its position in this case. If the Government can say, "You shall not work"—Your Honor, I feel—I don't know whether the Government will come in and say or argue—if the Government finds

that Mr. Lewis is paying strike benefits to his members—"Are you paying strike benefits to your members? You will stop that or be in contempt."

My associate here tells me that it is by this language, at least by implication, "and from coercing, instigating, inducing, or encouraging mine workers in bituminous coal mines in the Government's pos-
39 session, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation, and so on."

The COURT. That is prohibited in the Smith-Connally Act, Mr. Padway.

Mr. PADWAY. The Smith-Connally Act is an entirely different matter. We will come to that. It is prohibited in the Smith-Connally Act, but my short answer to that is this: The Smith-Connally Act is not a constitutional enactment. No court has yet said it is. We have tried to get that upon three or four occasions. We want to test those things.

The Smith-Connally Act was much more careful than the Government was in this case to preserve the rights. At least, in the Smith-Connally Act, with its restrictions and enjoinders, a single individual may quit work. There is no such inhibition here. In the Smith-Connally Act, as you will notice, a single individual has a right to quit, and it says the court shall not issue a decree or do anything restraining that. We have no such restriction here.

If Mr. Lewis was the only man who went out on strike, your decree affects him, or whoever ceased employment.

Now, by all lawful means, aiding any person participating or interested in a labor dispute, who is being proceeded against in or
40 who is prosecuting any action or any suit in any court of the United States in any State.

Unless one is familiar with the history of labor, unless one is familiar with the provisions to which this is applicable, it would be hard to understand why. I will tell Your Honor why that provision was put in there.

There were Federal judges, if you please, down in Virginia and other places, that, when cessation of employment took place on the part of miners and mines that provision there had those miners and mines directly in mind, and the miners' interests, who lived in Government houses, and who were evicted from those Government houses by justices of the peace, and the like, who were company-dominated or company-controlled, and then when the mine workers decided to remain on strike and put up bonds on appeal, so that they might occupy their houses pending appeal, the Federal Courts enjoined the bonding companies, if you please, lawyers, and others, from aiding or assisting those miners in remaining in the homes that they occupied.

It was necessary for Congress to overcome evils such as that, evils written into injunctive decrees.

The COURT. What you are trying to do is to blame all of that on this Court. I am listening very patiently, but I am not responsible for any of that.

Mr. PADWAY. I am not trying to do that at all. What I am trying to do is this: I am trying to prevent the Government from bring-
41 ing back those conditions through such decrees. I am showing it to show that Congress has taken that jurisdiction away.

Now, if the Court please, it has been exercised here—and I do not say this ungraciously or disrespectfully—but it has been exercised here and what I am trying to say is that Congress had these very things in mind and took it away.

Now, the Government says it has not been taken away and that you have the right to exercise it. What are these things but protection to the miners? The miners were told by Congress, "You will no longer be confronted with a decree by a Federal judge."

The COURT. Mr. Padway, you may be right, but what you are unconsciously contending is this: That when society itself endeavors to protect itself from hunger, starvation, cold, a letting down of production and unemployment, social disintegration, it is engaged in a labor dispute. You may be able to vindicate that position, but that is what you are contending now.

Mr. PADWAY. I am contending that there is here a labor dispute, and the Government may contend that, but we do not concede it—we do not concede that we are doing that which the Government says we are doing. On the contrary, there need not be that, if the Government takes the position it should take under its agreements and its
42 contracts. The miners are not subject to what we contend is a violation of contract on the part of the Government, and yielding to the Government's interpretations. That is involved in the original suit, and when that suit will be tried, if it is, when the time comes to try that suit the false impression that the Government has endeavored to leave, and the impression that the columnists and writers have endeavored to leave, will be wholly dissipated by presentation of the most justifiable reasons for the miners' conducting themselves as they have.

There need not have *any* been any cessation of employment and there need not be today if the terms and provisions of the contracts that were entered into were complied with by the Government.

First, the Government, as we contend, breaches the contract and cries out and says, "You, sir, are this and that." That goes to the merits of the principal case, which I said I was not going to argue.

Let us see. I do not know whether it is necessary for me to argue that we have here a labor dispute. If it is, I will present it; I will go right down to that, from the very correspondence that Mr. Lewis and Mr. Krug and Mr. Cullison went into.

The COURT. Calling it a labor dispute does not make it one.
43 Mr. PADWAY. No, but the facts that constitute a labor dispute make it so.

The COURT. You are correct about that.

Mr. PADWAY. Now, in view of that, I should like to go to the facts.

If the Court please, Section 13 (c) of the Norris-LaGuardia Act provides in part as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

The Government does not contend that there is no controversy over terms and conditions of employment. The very reply on the part of the Government was this: You, Mr. Lewis, you go to the private owners and take up with them the terms and conditions you seek.

The very correspondence that Mr. Lewis engaged in was to call attention to certain grievances which are the very essence and foundation of a labor dispute

I do not know; the Government may say that there is no labor dispute, on the theory, as it set forth in its brief, that there can be no labor dispute with the Government. That is one thing; but to say the facts and circumstances in this case do not pose a labor dispute—that is simply to deny plain and elementary facts.

The very possession of the mines in the Government is a labor
44 dispute, and Congress in the Norris-LaGuardia Act said a labor dispute shall be those things that grow out of labor cessation; and if this cessation of employment has not grown out of a labor dispute, I do not know what has.

My associates, in a brief prepared—I was absent from the city when this happened, but I have read it very thoroughly, and the brief has been filed, but I should like to take the opportunity to read this page:

"That this case involves a 'controversy concerning terms or conditions of employment' will not, indeed it cannot, be denied. It is affirmatively and unequivocally set forth in explicit terms in the pleadings filed by the plaintiff. Thus, the immediate controversy which eventuated in the notice of November 15, 1946, was initiated by the Lewis letter of October 21 addressed to the Secretary of Interior. Mr. Lewis stated to Secretary Krug that the Government has misinterpreted the agreement respecting 'pro rata vacation payments' and in interpreting the manner in which 'railroad weights rather than tipple weights' were being used 'to compute the payments due the welfare and retirement fund,' both of which clearly as encompassed within the statutory phrase 'terms or conditions of employment.' In addition, in that letter Mr. Lewis requested a conference 'for the purpose of negotiating new arrangements affecting wages, hours, rules
45 * * * and all other pertinent matters * * * which too clearly is within the meaning of the statutory phrase 'terms or conditions of employment.'"

Let us for a moment dismiss from our minds the Government. Let us consider in terms of X being the party on the other side. I think I can safely say that this court would rule that each demand constitutes a labor dispute. If they do not constitute it, if demands concerning wages, hours, and working conditions do not constitute a labor dispute when the parties cannot agree, then I am at a loss to know what does constitute a labor dispute. Then the definition is wholly without merit.

"In response to that letter Capt. Collisson wrote Mr. Lewis on October 22 wherein he stated the Administrator's readiness to meet with the Union and said, 'It is suggested that any negotiating conferences looked toward a new agreement be had with the representatives of the owners of such mines.'"

By the way, if the Court please, these are exhibits attached to the complaint. The Government has brought that to your attention, and it is before you by the Government's own conscious admissions or inclusions.

Now, isn't that an admission that there is a controversy respecting these things?

46 The COURT. Mr. Padway, first I would like to ask you whether or not it is your contention that the United Mine Workers of America, under the Krug-Lewis agreement, are not subject to Section 6 of the Smith-Connally Act, which provides:

"Whenever any plant, mine, or facility is in the possession of the United States, it shall be unlawful for any person (1) to coerce, instigate, induce, conspire with, or encourage any person, to interfere, by lock-out, strike, slow-down, or other interruption, with the operation of such plant, mine, or facility, or (2) to aid any such lock-out, strike, slow-down, or other interruption interfering with the operation of such plant, mine, or facility by giving direction or guidance in the conduct of such interruption, or by providing funds for the conduct or direction thereof or for the payment of strike, unemployment, or other benefits to those participating therein. No individual shall be deemed to have violated the provisions of this section by reason only of his having ceased work or having refused to continue to work or to accept employment."

47 Now, it is your contention that under the terms of the Krug-Lewis Agreement, where the Government had taken over the mines, that the United Mine Workers of America are not subject to the section of the Smith-Connally Act which I have just read?

Mr. PADWAY. In the first place, Section 6 of the Smith-Connally Act is a criminal section. It will be observed, it provides criminal penalties. If there were a criminal proceeding here, the Government could make that contention.

This, however——

The COURT. That is not what I asked.

Mr. PADWAY. But it is leading up to the answer to what you asked, Your Honor.

This is an equity proceeding, a request for an injunction in a labor dispute, and there is nothing in the Smith-Connally Act that says that the Norris-LaGuardia Act is inapplicable; nothing whatever, and, if Your Honor will read the National Labor Relations Act, you will see that where the Government seeks injunctive decree to enforce that Act, it specifically says that the Norris-LaGuardia Act, in the relief sought by the Government under that Act, shall have no application and that is why the Smith-Connally Act is still applicable regardless of Section 6 of the Act you have before you.

48 The COURT. I know; but, if you prefer, the Court will not compel you to answer.

Mr. PADWAY. I will answer. I don't want to hedge. I say that doesn't confer jurisdiction upon you, that which has been taken away.

The COURT. But, first, do you say it is not applicable to the United Mine Workers of America?

Mr. PADWAY. If it were a criminal case, while we wouldn't plead guilty to a violation of the section, it would be applicable to the issues.

The COURT. Another thing you are arguing, sir, is: That under the terms of the Lewis-Krug agreement, and under the Smith-Connally Act, that you have no provision which would give you an opportunity to air your legitimate grievances.

Now, Section 5 of the Smith-Connally Act is as follows:

"When possession of any plant, mine, or facility has been or shall be hereafter taken under authority of Section 9 of the Selective Training and Service Act of 1940 as amended (Section 309 of this Appendix) the Government agency operating such plant, mine, or facility or a majority of the employees of such plant, mine, or facility or their representatives may apply to the National War Labor Board

(which has now been changed to the National Wage Stabilization Board) for a change in wages or other terms and conditions of employment in such plant, mine or facility. Upon receipt of any such application and after such hearings and investigation as it deems necessary, such board may order any changes in such wages or other terms and conditions which it deems to be fair and reasonable and not in conflict with any Act of Congress or any executive order issued thereunder. Any such order of the board shall upon approval by the President be complied with by the Government agency operating such plant, mine, or facility."

Now, are you contending that you had no means of redress for grievances under Section 5 of the Smith-Connally Act?

Mr. PADWAY. Now, if the Court please, that particular section that you have read now, and the question you have put, is involved in the main issues of the case. I got back from Honolulu yesterday afternoon at 2 o'clock. I have worked as hard and as fast on this case as possible, and lest I be not too well informed on that phase, my associate counsel asked me not to concern myself with those issues.

The COURT. The Court doesn't insist on your answering the Court's question.

Mr. PADWAY. Hear me through, please.

I want the Court answered, because we have briefed it; we have taken it into consideration.

I have a superficial thinking on the subject from the brief, but Mr. Kaiser and Mr. Hopkins, who have worked on this for the best part of the week, know the answer and unless—and lest I make an incorrect answer, would Your Honor permit me to set down for a moment and have Mr. Kaiser answer that point and permit me to proceed?

The COURT. You can do that, or else defer——

Mr. PADWAY. I would rather do that, because I want Your Honor answered.

The COURT. All right.

Mr. KAISER. If the Court please, as Mr. Padway has indicated, the question is more properly addressed to the issues raised on the primary case.

The COURT. Yes; but the difficulty is this, sir:

For a period of nearly an hour and a quarter the argument of the defendant has consisted in attacks on rulings of the Federal Courts prior to the Norris-LaGuardia Act, and in saying, either by direction or by necessary implication, that under the Smith-Connally Act they had no redress.

Now, it does not occur to the Court that that is a fair argument. We may not have reached that part of the case yet, but at the same time, I have listened to the argument, and it has not seemed to me to be a fair argument.

Mr. KAISER. If the Court please, the reason for the argument, which I should like to be able to state succinctly, is that the Court indicated, very fairly, on Monday, that when this case was brought to your attention, first, you were bothered with two things: one of which was whether or not the Court had any business in this kind of a labor dispute, and, as opposed to that, you had the suggestion——

The COURT. I don't think I called it a "labor dispute," sir.

Mr. KAISER. In this sort of a situation, as opposed to that, the Court was disturbed about a fact that this was a matter of great public interest, and that the sovereign is involved, and you even referred, in what you said, and I respectfully suggest, erroneously—to the fact or to the well-known rule, as you stated it—that laws do not apply to sovereigns unless specifically excluded.

Now, the argument for the past hour and a half was addressed to this particular thesis, that the Norris-LaGuardia Act, out of a long and sordid history, south completely to divest courts which are equally sovereign and part of the Government, from their power to step into disputes and issue ex parte orders and injunctions, and that there is nothing in that history to indicate that whereas these Federal Courts might have abused their jurisdiction, where private employers
52 were involved, that they did not abuse their jurisdiction where the Government called upon them; that as a matter of fact, some of the cases most loudly decried were cases instituted by what counsel now calls the sovereign government.

We respectfuly suggest that the Courts are equally sovereign with the executive department; that there is nothing in the language of the statute which limits it to private persons; and that Congress in the debates and reports was addressing itself to as much the Government actions—that is, executive department complaints—as to anyone else.

The COURT. Those who handled the bill didn't so state, to members of Congress.

Mr. KAISER. If the Court please, an amendment was offered to the Congress to accept petitions filed by the Government; an amendment offered by Congressman Blanton was voted down by some 26 to 200, that precise amendment was offered to the Congress. The Congress discussed the Wilkinson injunction issued by Wilkinson at the request of Attorney General Daugherty. The Congress discussed the In re Debs case, a governmental request or governmental complaint.

Now, we say if the Congress has, which I think must be conceded, full and complete power to set the jurisdiction of the courts, then what we are dealing here with is not with parties or things, but with court jurisdiction. If the court is without jurisdiction, it matters not who invokes that jurisdiction. The Congress did not mean
53 to say that unions or anybody else may unlawfully act. They merely said that this type of situation should not be handled by Federal equity jurisdiction.

Now, because they abuse it, in the case of all parties, what the Government is actually suggesting here, if the Court please, and I don't mean to be facetious, is that it is not right for Federal courts to abuse their equity jurisdiction when private parties call upon the courts; but it is perfectly all right when the Department of Justice asks you to abuse your jurisdiction.

The COURT. Then, if that is their position, I have misunderstood it completely.

Mr. KAISER. If the Court please, in that memorandum, their memorandum, I believe it is about page 8 or 9——

The COURT. There is nothing that has been said to me directly or indirectly by anybody which would bear out your statement, sir, up to this time. I don't know what sins they are going to commit later, but they haven't committed that sin yet.

Mr. KAISER. If the Court please, in their memorandum, as I read it, they simply say that there can be no labor dispute with the sovereign government. That is all they say.

We are prepared to argue, and show conclusively from the
54 record in this case, that this is not a sovereign function of the Government; that the Government has declared that the employees working in the coal mines are not Government employees; that the sovereign is urging upon this union to turn back what Government now calls the sovereign function—conceive of it, Your Honor, a sovereign function—and Secretary Krug is urging publicly that this so-called sovereign power should be returned to private persons.

The COURT. What issue of this case are you arguing now?

Mr. KAISER. I am arguing, if the Court please, what I conceived to be the most important issue. I suggest that the only circumstance in this case which differentiates it from any other case involving the Norris-LaGuardia Act is the fact that this case arises under the executive order of the President, which puts the Government into the business of administering the coal mines. That is the only circumstance in this case which distinguishes it.

The COURT. Didn't the President take it over for the express purpose of having situations like this avoided? Wasn't that the express purpose?

Mr. KAISER. Now if the Court please, the President took over in May, or earlier of this year, and issued a proclamation directing Mr. Krug to take charge; authorized the negotiation of an agreement, an agreement that was then subjected, under article 5 of the Smith-
55 Connally Act, to the consideration of the War Labor Board. That agreement incorporated all the other provisions.

The Government comes to this Court and states that there is—quite accurately—an honest difference of opinion between the Government on the one hand, and Mr. Lewis on the other, as to the meaning of one particular clause in that agreement, namely, the duration clause.

They say there is a genuine dispute, and so they come to this court, not for an injunction, mind you, but to have this Court issue a declaratory judgment as to which of these two parties is correct in their interpretation as to the legal effect of that one clause; and so, they say, there is a doubt. The implication necessarily must be, no one can say at this stage of the proceeding that Mr. Lewis has not correctly interpreted the contract, only the court can say that and will say that. We know not when, but supposing the court does say, at some later date, Mr. Lewis was correct? What kind of comfort will Mr. Lewis or the union members get from a decision sometime in the indeterminate future that "You were right, Mr. Lewis, in issuing your notice of termination back in November, but all this time you have been restrained under the coercion of a lawful order"?

The COURT. The Court doesn't see that picture at all. This is the picture the Court sees. The picture the Court sees is this: That
56 the Court examined this complaint for a restraining order and reached the conclusion that a delay of eight or ten days could not interfere with the union; and, that we would meet here, in formal discussion, talk over the matter judicially and quietly and decide upon the proper interpretation of that contract.

Now, that is what the Court had in mind, and that is what would have been done. That is what would have been done and that is what would have happened and it could not, in the Court's opinion, have injured the union in any way, so that any idea that you may express of the matter being continued from time to time and from month to month is beside the point, sir. It would not have been handled by this Court in that way.

Mr. KAISER. If the Court please, I am not—and I hope the Court does not get that impression—I am not attacking the Court's action as such; I am attacking the complete inconsistency in the complaint itself. The complaint is for a declaratory judgment, as I have stated. The injunctive relief is in the nature of ancillary relief.

The COURT. That is true.

Mr. KAISER. Pending the decision of the Court.

The COURT. That is true.

Mr. KAISER. On the main issue—who is right.

I suggest, if the Court please, that the only propriety for issu-
57 ing a restraining order, forgetting the Norris-LaGuardia Act, I am talking now on direct equity jurisdiction, is to maintain a status quo.

The COURT. That is what the Court was trying to do.

Mr. KAISER. Well now, if the Court please, if Mr. Lewis is correct in his major case, and the Court has not decided, because it has not had opportunity to decide——

The COURT. That is true.

Mr. KAISER (continuing). That he is not correct, then by issuing this injunction, you do not maintain the status quo, sir, but you effectively—now, if the Court please—you issued this injunction as a permanent order, for a ten-day period.

The COURT. It was a restraining order which couldn't run longer than ten days.

Mr. KAISER. That is right.

Now, even if we limit it to that short period——

The COURT. It would have been limited to that period. This Court would have had an immediate hearing, there is no question about that, sir.

Mr. KAISER. Precisely; but the order or notice terminating the agreement, as I recall it, became effective within five days after the order that Your Honor issued. The precise dates Mr. Hopkins will soon give you.

58 My point is that by the terms of the order, itself, it extended beyond, that is, the ten-day period of your order extended beyond the termination date of the agreement, as Mr. Lewis viewed that to be, that is, he considered it to be the correct interpretation of the agreement.

The moment you got beyond midnight, I believe it was November 21, the order effectively granted not status quo relief, but was addressed to the major proceeding and effectively determined that without a hearing.

The COURT. The Court does not agree with that in any sense of the word.

The purpose of the hearing would have been to determine whether the union had a right to conclude the Krug-Lewis agreement in thirty

days, or whether the union had to maintain its relation with the Government as long as the Government had control of the mines, their redress being in Section 5—I mean, their opportunities for redress of grievances being confined to Section 5 of the Smith-Connally Act.

The Court does not take at all the position that the Court's granting of that restraining order decided the question in dispute between the Government and Mr. Lewis.

Mr. KAISER. I know that the Court did not decide—if the Court please, I am not saying that the Court decided; I said it had the practical effect—

59 The COURT. The Court does not think so at all. Whether your position is right or wrong, the Court feels that your attitude in not awaiting a judicial determination was a very great mistake on your part, and the Court, of course, is of the opinion that if you did not obey the restraining order, you would be guilty of contempt of court. But the Court does not pass upon that question at this time. The thing that the Court is passing upon right now is whether or not this motion to dismiss should be allowed.

Now, the Court feels that the answer to the Court's questions have not been forthcoming, and it is not worth while, and probably the Court made a mistake in asking the questions.

The Court will now take a recess for five minutes.

(Short recess.)

The COURT. Proceed.

Mr. HOPKINS. If it please the Court, you, a short few moments ago, asked or propounded a question to Judge Padway, as to which he had not had the time or opportunity, in light of his recent return to the city, to make himself aware of the chronology of the facts that would, as the defendants see it, run directly to the answers to the problems and questions proposed by Your Honor. Therefore, with the desire, Your Honor, to meet the questions squarely in answer, we would like to point this out to Your Honor. I think the chronology will, in

60 and of itself, with a brief statement thereafter, answer the Court's questions.

The contract of April 11, 1945, executed between the Mine Workers and the operators, was national in scope. It contained a section known as Section 15, which I should like to read to Your Honor briefly. It is short and this points out its significance.

The COURT. Proceed, sir.

Mr. HOPKINS. That section of the contract reads as follows:

"This agreement dated the 11th day of April, 1945, shall be effective as of April 1, 1945, and shall continue in effect hereafter subject to the conditions and termination as herein provided. At any time prior to April 1, 1946, in the event a significant change occurs in the Government wage policy, either party shall have the right to request negotiations on general wage rates."

Continuing to quote:

"At any time after March 1, 1946, either party may give ten days' notice in writing of a desire for a negotiating conference upon the matters outlined in said notice. The other party agrees to attend said conference. At the end of fifteen days—fifteen days after the termination of said negotiating conference—either party may give to

61 tin other a notice in writing of the termination of this agreement to be effective five days after receipt of such notice."

Now, sir, chronologically, that contract being in existence from April 11, 1945, to 1946, terminated on or about midnight, April 1, 1946. Thereafter came the work stoppages.

On May 21, the President, by Executive Order 9728 seized the mines, and in that order he directed the Secretary of the Interior to negotiate with representatives of the Mine Workers.

The COURT. Under section 5 of the Smith-Connally Act?

Mr. HOPKINS. Yes, sir. Subject to that—and I want to cover that point—he precisely said that.

On May 29 there was executed the Krug-Lewis Agreement, and that Krug-Lewis Agreement, Your Honor, in section 1, was headed "Provisions of National Bituminous Coal Wage Agreement preserved," the National Bituminous Coal Wage Agreement being the document of April 11, 1945, which contained the provision, section 15, just read to Your Honor. That is the heading of the section—"Provisions of the National Bituminous Coal Wage Agreement Preserved."

"Except as herein amended and supplemented, this agreement carries forward and preserves the terms and conditions contained in all joint wage agreements effective April 1, 1941, through March
62 31, 1943," and that reference is, there, sir, because the agreement of April 11, 1945, carried forward the agreements that had been executed in 1941; and then, in 1943—carries forward the supplemental wage agreement providing for the six-day workweek and all district agreements executed between the United Mine Workers and various coal associations and coal companies as they existed on March 31, 1943; and then carries forward—what, sir? It carries for the National Bituminous Coal Wage Agreement dated April 11, 1945, containing Section 15.

The COURT. Is it your contention that Section 5 and Section 6 of the Smith-Connally Act do not apply, is that what you are contending?

Mr. HOPKINS. No, sir; not precisely, sir, perhaps in both directions; but, if Your Honor will indulge me——

The COURT. Proceed.

Mr. HOPKINS. Now, this Krug-Lewis agreement, sir, that carried forward this section, executed the 29th of May, was in accordance with the Presidential Executive Order submitted to the Wage Stabilization Board under the section 5 for its approval.

Now, who submitted that contract, in accordance with Executive Order, to the Wage Stabilization Board under Section 5? The Government itself, through the Secretary of the Interior, submitted it.

He submitted it without re[illegible]gation. He submitted it with
63 his full approval and asked for its endorsement under section 5.

The Wage Stabilization Board approved the Krug-Lewis Agreement. The President of the United States endorsed his approval thereon, sir, and that Krug-Lewis Agreement carried forward and preserved the terms of the National Bituminous Coal Wage Agreement that contains Section 15 that says, in substance, that either party may give a ten days' notice asking for negotiations. Thereafter, it is the duty of the other party to meet the requesting party to negotiate. They shall negotiate for a period of fifteen days and thereafter, according to the

wording of the contract, itself, either party may give to the other a notice in writing of the termination of this agreement to be effective five days after the receipt of such notice.

Now, what occurred, sir?

On October 21, of this year, as the result of misinterpretation and difficulty and disputes growing out of the working conditions and the hours of labor and other problems involved in the labor dispute, the United Mine Workers of America exercising its right to reopen this contract to the extent of asking negotiations, and bearing in mind, sir, that it was exercising a right in a contract that had received the stamp of approval of the Wage Stabilization Board under Section 5, filed its notice of October 21, addressed to the Secretary of the
64 Interior, in which he respectfully requested as follows:

"The Krug-Lewis Agreement having thus been breached and significant changes in Government wage policies having occurred, you are accordingly hereby officially notified, the United Mine Workers of America request a joint conference of their accredited representatives, and representatives of the joint contracting parties to the Krug-Lewis Agreement of May 29, 1946, for the purpose of negotiating new arrangements affecting wages, hours, rules, practices and differentials and other pertinent matters, and it is respectfully suggested that the conference convene on November 1, 1946, in Washington."

What happened thereafter, sir? The Secretary of Interior, being out of the city, sent various and sundry telegrams, then, on or about October 27 or 28, as part of the pleadings in the Government case, sir; and one of the exhibits in the action in chief, designated Captain Collisson, the then Coal Mines Administrator, or about to become so, upon the resignation of Admiral Moreell, met the mine workers' representatives, on November 1, without the presence of Secretary Krug.

Those conferences continued, sir, from day to day until November 11, a period of ten days almost, before the Secretary of the Interior came into the conference, sir; and as a matter of record not to be
65 disputed, I think from November 11 until November 15, the Secretary of the Interior devoted, by the clock, a total of three hours and thirty-odd minutes to the conference both privately and in joint group with the mine workers who had respectfully requested it.

For a period, sir, of fifteen days from November 1, to November 15, the mine workers were knocking at the door of Government, under a request and notice respectfully directed to them, to negotiate this agreement. Government, through the Secretary of the Interior, refusing. On the morning——

The Court. I don't think you should make a statement of that kind, sir. The question there was this: The United Mine Workers claimed that this Section 15 continued as part of the Krug-Lewis Agreement.

Mr. Hopkins. Yes, sir.

The Court. Now, the Government contended that it did not continue during the period when the Government had the mines, but that the United Mine Workers were relegated to Section 5 of the Smith-Connally Act.

Now, that was the controversy. There isn't any question about that, and all this restraining order did was to hold the matter in abeyance until you could get a judicial decision.

Now, I don't say that you didn't want a judicial decision, I don't know what your idea was in precipitating this walk-out, but I do know if the restraining order had been obeyed, and we had met here, formally, and discussed this matter, it could have been worked out in a legal way, which should have been satisfactory to all parties, and this avoided this very distressing situation.

Mr. HOUSTON. In that regard, Your Honor, speaking for the mine workers, we had no overture from the Government or suggestion from the Government, and I respectfully submit that we had no suggestion from the court. We would have been pleased, had it been Your Honor's desire, to have met Your Honor at any time for discussion upon this problem, sir.

The COURT. How can you say that, in view of the fact that you disregarded this restraining order?

Mr. HOUSTON. I missed the point of Your Honor's question, perhaps. I thought you meant at a time immediately subsequent to the issuance of the restraining order. As a matter of fact, with all due deference, not intending to get into any controversy as to what right we might or might not have asserted under the two-day rule, if that is the point Your Honor refers to, I merely want to say to you, again, sir, in response to your question on Section 5, if you will, that the defendants believed and they so aver and allege, now, that Section 5, in its operating effect, when the Krug-Lewis agreement in accordance with the executive order was presented to the board, and it approved it on May 31, it approved the right, per se, of the mine workers to exercise their right to reopen.

The COURT. I know, but that is what the restraining order was for—to give you an opportunity to show that that was true, or to give the Government the opportunity to show that their argument was true; and you have disregarded the restraining order.

Mr. HOUSTON. These points I make run more directly, of course, sir, to the answer of the Government complaint for a declaratory judgment.

The COURT. Of course.

Mr. HOUSTON. I raise them now, because I understood the Court raised the question.

The COURT. Hadn't you better let Mr. Padway complete his argument on the Norris-LaGuardia Act?

Mr. SHAWELL. I am most reluctant to interrupt counsel, but I think it only fair to the Government to state that many of the observations which counsel has made as to the facts are quite premature, and I believe, quite inaccurate at this time. The Government has stated and now states it will produce its witnesses in open court subject to cross-examination.

The COURT. Now, Mr. Padway, you may proceed.

Mr. PADWAY. What I have thus far said or attempted to present to the Court was merely this, that the Norris-LaGuardia Act applies to the Government, as well as anyone else, no exceptions.

That jurisdiction has been denied to the United States District Courts with respect to the right to issue injunctions in labor disputes.

Now, I don't know whether I have sufficiently referred to the correspondence between Mr. Lewis and Mr. Krug, which established the labor dispute.

Assuming that these mines were in the possession of private parties. In other words, the facts would be the same whether it be the Government or whether it be a private party or who else ever it may be, if there is a right to demand higher wages, shorter hours, better working conditions upon whoever had charge or control or who considers himself the boss, then we have made those demands and if those demands constitute a labor dispute then we have here a labor dispute, and if they do not constitute a labor dispute, then we have not established a labor dispute. But I don't think even the Government will contend that.

As I take it, the Government makes a different contention here. It says that it is not governed by the Norris-LaGuardia Act, but
69 that the Norris-LaGuardia Act applies only to private individuals, private employers, union workers in their disputes, and I contend, and I point to a statement by LaGuardia himself, and by Mischner, which they believe would seem to indicate that that is so.

Well, LaGuardia's statement ought to be read in its entire contents. You will find that what he had in mind is entirely different from what the Government contends, namely, he had in mind governmental functions such as the running of a post office, government police, if there were any, the Government fire department if there were any. In other words, the functions that are necessarily nonproprietary but are actually governmental functions.

Mischner had the same thing in mind. When we come to examine the history of the Act, not what certain persons may have expressed themselves with respect to it, although the court may give some weight to those who managed and had charge of the bill, but as Mr. Kaiser in his short résumé said, that actually two attempts were made as we have set forth in our brief on the part of the legislators, Members of Congress, to state that very proposition, namely, that the Government shall not be included in the Norris-LaGuardia Act, and both of them were rejected by large votes—2 to 1, in one instance, and 3 to 1 in another, and that was rejected.

That is more significant than the interpretation or offhand
70 statement that the Government is not involved in this by some legislator. But the Government takes the position, as I take it, that the rule of law is that where Government itself is involved, a statute passed with respect to the general public does not involve the Government.

Now, there are cases to that effect; but there are cases that would hold and explain that it is not necessarily so.

That may be taken as an offhand proposition that in the appropriate cases where a statute is passed, the Government is not bound by that statute, or it may not apply to it unless it specifically says so.

What I think is significant with respect to labor disputes, Congress was dealing with the court's jurisdiction—with a limited part of the system of jurisprudence under which the Federal Courts operate.

It was dealing only with the specific proposition of the labor dispute and the injunction that may accompany it if grounds are presented in the nature of a petition or a complaint. That is all it was dealing with, and it said "It shall not have jurisdiction unless" such and such exists.

Now, in the Obergfell vs. Green case, which I tried before Your Honor, Your Honor was then of the opinion, as I recall, that there was not a labor dispute. I contended very vigorously——

The COURT. That was not the issue in that case, Mr.
71 Padway.

The question of a labor dispute—it was just the question of jurisdiction in that case.

Mr. PADWAY. Maybe Your Honor recalls it better than I do; but I do want to say this, I think both were involved. I think the decision went on both grounds. It is true; you are correct when your say that jurisdiction existed.

I raised the question of labor disputes. I think Your Honor's ruling first was that it was not a labor dispute and Your Honor had some cases to support you. You remember it was a case involving two unions——

The COURT. I recall about it, sir.

Mr. PADWAY. And I have the decision before me, if Your Honor would care to see it.

The COURT. It is not necessary to read it to me, Mr. Padway. I know all about it.

If you think anybody else is interested, you can read it to them. (Laughter in the courtroom.)

Mr. PADWAY. No; I am only interested in what Your Honor thinks this morning.

I say this, that the issue there was twofold: one, have we a labor dispute; and two, did the Court have jurisdiction.

I think you have to have that issue in every question
72 of the Norris-LaGuardia Act, "Have we a labor dispute?"

The COURT. I guess you are right about that.

Mr. PADWAY. And if there is no labor dispute, then the question is out.

Now here is what counsel is attempting to say, that there is no labor dispute.

They base that on cases. They claim that the Government is excluded from the Act.

We have cited in our brief these cases:

"Since, in common usage, the term 'person' does not include the sovereign, statutes employing the phrase are ordinarily construed to exclude it. But there is no hard and fast rule of exclusion. The purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute are aids to construction which may indicate an intent, by the use of the terms, to bring state or nation within the scope of the law."

That occurs in U. S. v. Cooper Corporation, 312 U. S. 600; also quoted again in U. S. v. California, 297 U. S. 175.

Now, again the Court went on to say:

"Decision is not to be reached by a strict construction of the words of the Act, nor by the application of artificial canons or construction; on the contrary, we are to read the statutory language in its
73 ordinary and natural sense, and if doubts remain, resolve them in the light not only of the policy intended to be served by the enactment, but as well by all other available aids to construction. But it is not our function to engraft on a statute additions which we think the legislature logically might or should have made."

That I urge in favor of this, when we make a comparison with the National Labor Relations Act, that deals with the same definitions of

the labor dispute and brings the labor dispute and all attendant questions relating to it within that Act, because of the definition there, the Congress did this. Speaking there of injunctive decrees the Government must ask to restrain persons and to compel compliance with cease and desist orders issued by the Board, Congress said: "When granting a permanent or temporary relief or a restraining order or making or entering any decree enforcing or modifying, or setting aside in whole or in part, an order of the Board, as provided in this section, the jurisdiction of a court sitting in equity shall not be limited by the Act entitled 'An Act to amend the judicial code and to define and limit the jurisdiction of courts sitting in equity.'"

And they give the citations of the Norris-LaGuardia Act.

74 And that has been found in many Acts where they felt that. Unless that were considered there might be a different construction placed upon it.

Counsel says you don't need to put those in there. It is a matter of course.

Well, here is another decision. The decision of United States v. California:

"Respondents invokes the canon of construction that a sovereign is presumptively not intended to be bound by its own statutes unless named in it"—

And it refers to the British Doctrine.

Of course, the British case is entirely different. You have there a monarchy, and the King has certain powers to distinguish from Parliament, and he is supreme, and there is involved the power of the monarchial form of government in that country.

"The presumption is an aid to consistent construction of statutes of the enacting sovereign when their purpose is in doubt, but it does not require that the aim of a statute fairly to be inferred be disregarded because not explicitly stated." See Baltimore National Bank v. State Tax Commission, and other cases stated.

"We can perceive no reason for extending it so as to exempt a

75 business carried on by a State from the otherwise applicable provisions of an Act of Congress, all-embracing in scope and national in its purpose, which is as capable of being obstructed by State as by individual actions. Language and objectives so plain are not to be thwarted by resort to a rule of construction whose purpose is to resolve doubts and whose application in the circumstances would be highly artificial."

Now, my purpose in the reviews that I made this morning quite extensively as to what related to the Norris-LaGuardia Act was for the purpose of not only to affirmatively grant labor certain rights which shall not be interfered with but to limit the power of the Court. There is no question but if these decisions are accepted the Court must hold that the sovereign in this instance is bound by the same rules under the Norris-LaGuardia Act, particularly when it is in private business, as it is here, regardless of the fact of how it acquired that business.

Now, furthermore, in the passage of the Norris-LaGuardia Act and in the Committee Reports you will find a significant reference why the Norris-LaGuardia Act is being passed; why Congress is asked to pass it.

And it said this:

"This section is included principally because"—

This is Section 5 of the Act—

76 "because many of the objectionable injunctions have been issued under the provision of the antitrust laws, making it a necessary prerequisite for invoking the jurisdiction of which is a finding of the existence of a conspiracy and without which no injunction could be issued."

In other words, the Government was very active under the antitrust laws, both to include labor, as Your Honor will recall one of the very earliest cases so well known, the Lawler vs. Lawler, and the Danbury Hatters case, and other similar cases, labor was confronted with those junctions, and the Debs case, all based upon so-called governmental functions, and the Government seeking to prevent the evil of monopoly and trust, which was then being considered and legislated upon, and yet it said here, "We are passing this Act because most of the injunctions are the worst sort of injunctions, were those that the Government sought."

Now, if the Court please, in addition to that we have actual recent authority for the Government being confronted with the Norris-LaGuardia Act, and counsel, in a rather adroit manner, seeks to pass it off in about ten or twelve lines, knowing full well that the Government had been bound by the Norris-LaGuardia Act time and again; had just this to say, and does it in a sort of a euphemistic

77 fashion.

"It is true that some Courts have held that the United States may not, because of the limitations of the Norris-LaGuardia Act, obtain injunctions to restrain labor union action in cases involving or growing out of bona fide labor disputes affecting private employers and their employees."

I challenge counsel to find anywhere where the Norris-LaGuardia Act or any decision by the United States Supreme Court, where there has been any distinguishing feature made between the injunction sought by the Government involving private employers or those involving the Government itself. There is no such distinction.

When the Government seeks an injunction it is the Government that seeks it, and there is no distinction to be made whether private employers will be benefited by or will not be benefited by it. The Government is the party, the Government seeks it, the Government invokes the statute and the law, and if the Government in those cases, if the Court please, is governed by this LaGuardia Act, so it is in this case.

Now, counsel goes on to say:

"In United States v. American Federation of Musicians"—

They knew we would cite these cases to Your Honor on this

78 point, so they have taken the bit and given them first—"and U. S. vs. Weirton Steel Company, Columbia River v. Hinton"—the controversy stated in the complaint here, however, is plainly beyond the scope of those decisions.

They do not distinguish why; plainly beyond the scope, but the legislative history of the Norris-LaGuardia Act itself shows why it is beyond the scope.

Now, let me see. Why is it beyond the scope?

The Court held the Government to be bound by the Norris-LaGuardia Act.

The COURT. Not in a case of this kind. You take that Musicians' case. It simply decided that a musicians' union was not subject to the antitrust laws, and that is all it did.

Mr. PADWAY. I beg your pardon, sir?

The COURT. Well, I read the case just yesterday.

Mr. PADWAY. I think that Your Honor has read that quite a while ago.

The principle of the whole case was based upon whether we have a labor dispute under the Norris-LaGuardia Act and then whether the Norris-LaGuardia Act applied.

Now, Mr. Thurman Arnold—since Your Honor mentioned that, I would like to take a few moments on it, because I am going to argue it anyway.

79 The COURT. That is all right. Proceed.

Mr. PADWAY. That is one of my strong points.

In this case we have this situation: The American Federation of Musicians issued a notice, its President did, similar to that issued by President Lewis, that from and after a certain time it will not work, and that is what our notice amounts to:

Unless satisfactory working conditions and grievances are adjusted.

All right; the Government, through Mr. Thurman Arnold,
80 sought to protect the public interest. It is only a matter of degree when you speak of coal or speak of music, because the intent there was alleged to be—and I am familiar with the pleadings because I tried that case in the court below and presented it to the Supreme Court of the United States—there Mr. Arnold alleged, among other things, such as the interference of music, and that the public wouldn't get music, argued it was an interference with the communications system of the United States. That in a degree may be comparable with the interference of a commodity like coal. There, too, the welfare was involved, and that, too, was during wartime, and Mr. Arnold, before Justice Barnes in the Federal Court in Chicago, argued most vigorously that these small stations would not be able to disseminate information and war news and rules and regulations that people may be asked to comply with during the war. He made all that argument in the Government's interest and the public interest.

Justice Barnes went into that: I have his opinion here:

"* * * the dispute involved in this case is a labor dispute within the meaning of the Norris-LaGuardia Act. That Act further provides:

"'No Court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any
81 case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:'."

And he goes on to state those provisions I have read, and I won't repeat them.

"In view of the foregoing provisions, jurisdiction does not exist to grant any of the injunctive relief here sought.

"The Court is further of the opinion that the acts complained of are of the kind specified in the second paragraph of Section 20 of the Clayton Act from"—

And then he calls attention to that Act.

"Accordingly, the acts complained of may not be considered or held to be violations of any law of the United States."

And the third contention had to do with the closed shop. And now he pointed out:

"The Court has been guided to the conclusions herein expressed by the decisions of the Supreme Court of the United States in United States v. Hutcheson and United States v. International Hod Carriers and United States v. Carrozzo."

82 And the whole presentation was not whether there had been a violation of the antitrust laws—that is, the decision wasn't that; the Court disregarded that entirely; that was Mr. Thurman Arnold's thesis, but the Court decided it on our basis, and the argument we are making herein that the Government was bound by the Norris-LaGuardia Act, presenting nothing more nor less than a labor dispute, and it being a labor dispute the Court had no jurisdiction. So Justice Barnes held.

Government was not satisfied. It appealed to the Supreme Court of the United States. We did the unusual thing, not too unusual but rare; we said on the face of the Government's pleadings setting forth various activities and the interest in the dispute, and so forth, that the Court ought to affirm. We made a motion to affirm the judgment in the Supreme Court without the necessity of granting a writ of certiorari or without the necessity of arguing the case, and little did I think the Court would grant such motion, but the Court did. It didn't deny certiorari. It affirmed the judgment and only in four lines, and cited two cases, and what cases does Your Honor think were assigned?

New Negro Alliance, of the Norris-LaGuardia Act, what constitutes, and the Milk Wagon Drivers' Union, also involving a
83 labor dispute, and the interesting thing about the last case was that the injunction invoked the Sherman Act as an issue, and the Court said regardless of a violation of the Sherman Act if you show a labor dispute herein the Norris-LaGuardia Act applied. Let me read these four lines to you:

"United States of America, Appellant, v American Federation of Musicians, James G. Petrillo. The judgment is affirmed. Act of March 23, 1932, (47 Stat. 70 Chap. 90) Norris-LaGuardia Act."

So that was the precise issue that I presented. I heard little about the Sherman Anti-Trust Act. Here is a labor dispute and Thurman Arnold argued the Government's interest, "You cannot urge that against the Government you are going to stop the whole communications system," and Justice Barnes thought otherwise and the Supreme Court thought otherwise. And the other cases cited were New Negro Alliance and The Milk Wagon Drivers' Union.

The New Negro Alliance case is a very interesting case.

Here in the City of Washington a negro organization, not a labor organization, a so-called welfare organization, picketed the Safeway Stores, because, as they alleged, the Safeway would not employ negroes—a sort of detached interest on the part of an organization that wasn't a labor organization—and there Justice Roberts elaborated

upon the definition of labor disputes in the Norris-LaGuardia
84 Act; and here in this case the Petrillo case, where Thurman Arnold on behalf of the Government urged the proposition urged here this morning, the United States Supreme Court affirmed Justice Barnes and said that is a labor dispute, and you, the Government, are bound by it and an injunctive decree cannot issue. And what more do we want than that? That is definite.

Counsel cite—I don't think I will go into that, that is the Carter case and the Shipp case; I don't think they are involved here for the moment on this particular point—but that is law that has recently been enacted, and that is the law of the United States Supreme Court.

I say here this Court may hold there is no labor dispute and surely we will defer to the Court's judgment on that, and this Court may hold that the Norris-LaGuardia Act may not apply, but it applies in this case as in the Obergfell v. Greca and the same as in the American Federation of Musicians and Petrillo, it applies in all the cases where the Act applies.

Take In Re Debs; I think that was decided in 1896; that was one of the foundations for the Norris-LaGuardia Act. The Committee Report elaborated on it. It was an injunction sought by the Government, and for what purpose? That was a governmental function. The decree was based on a complaint of allegations that Debs and
85 the members of the Railway Labor Union, at that time, in that Pullman strike, were preventing the mails from moving, and yet that was taken up by the Committee where the Norris-LaGuardia Act was discussed, and that was one of the bases for so wording it.

The intention, the thought, the manifestation of evidence certainly back of the Norris-LaGuaria Act was to take that power away from the Courts.

It is one thing to say that the Court may issue an injunction and we must obey it, even though it may be erroneously issued, and I concede that that is the law, but not when there is no jurisdiction at all, any more than we would be obliged to obey an injunction if some Municipal Judge here undertook to issue one.

Suppose a Municipal Court undertook to try this case or to refuse to issue the decree, and that Court without jurisdiction—by any stretch of the imagination could it be contended that Court would have power to punish us? If that Court has no jurisdiction ab initio then the order itself has no foundation whatever.

Counsel, however, does cite two cases, the Shipp case and the Carter case. The Shipp case did not involve the Norris-LaGuardia Act and it would be useless to consume time in arguing its effect because it didn't involve the powers and jurisdiction of the Court as limited or entirely deprived the District Court of jurisdiction. In other
86 words, a criminal case of a different statute.

But there is in the Carter case some statement to the effect that even though the Court did not have jurisdiction since the Court had the right in the first instance to determine whether it had jurisdiction or not, it should have been obeyed.

I would say, relying strictly upon the language of that decision, the Court could say, "I am the judge of my jurisdiction; I have decided that I do have jurisdiction; therefore, I have issued this order, and if you violate it you are subject to punishment."

But here we are today in this situation: we are arguing now whether the Court did have jurisdiction. And if the Court agrees that it did not have jurisdiction, and the Norris-LaGuardia Act applies in this case to the Government as well as to us, then the argument follows that the Government makes is this: yes, the Court did not have jurisdiction to issue the decree but the Court determined it had jurisdiction and the decree was issued; and we are still presenting that phase of the case and that issue to the Court.

The Court has come to the conclusion it doesn't have jurisdiction, but nevertheless since you violated the order you should be punished, and should be sent to jail, and so forth.

87 I say that can't be gathered even from the Carter case and if it could that is unsound law, and that is the only authority for that. That would be erroneous. Besides what our Court said in the Obergfell case, although it did not involve contempt but involved jurisdiction, could there be any question that this Circuit would hold differently? It never went to the Supreme Court.

By the way, counsel just reminds me that Judge Hutcheson wrote a strong dissent. In the Obergfell case, if Your Honor will remember, here is what our Circuit Court said:

"No lack of jurisdiction of the person may be supplied in that manner, as for example by a pleading requesting release similar to that requested by the other party, waiver or consent cannot confer upon a Court jurisdiction over the subject matter of the suit. In the instant case, as there was a labor dispute, within the meaning of the Norris-LaGuardia Act, the requirements of the Act concerning jurisdiction must be satisfied; absent which, the Court had no jurisdiction to grant relief."

I am sure that no other Court—I don't know how the Fifth Circuit came to that conclusion—but no Court will say where a Court has not jurisdiction in the first place but erroneously concludes that

88 it has and issues a decree, which to all intents and purposes is null and void, nevertheless you violated my decree, and the Court says, "Come forth here and be punished for it." Is that elementary justice? Would that make for a sound system of jurisprudence to say that?

The COURT. I don't think any other rule would accord with a sound system of jurisprudence. Of course, Mr. Padway, in a clear case of judicial use, or usurpation, if the Judge undertook to jail an individual for a violation of an order which involved a clear case of usurpation, any other respectable Court would release the individual under a writ of habeas corpus. There is no question about that. But unless it is a clear case of usurpation, unquestionably and beyond any doubt whatever the Court is the judge of its own jurisdiction and not the individual upon whom or upon which it issued its injunctive process. There is no possible doubt about that in this Court's mind.

Mr. PADWAY: I don't disagree with Your Honor in the statement of law you have just enunciated. What I disagree with is this: that although the Court in the first instance is the judge of its jurisdiction, that if it had no jurisdiction at all and issued a decree that decree would not be enforceable in contempt proceedings or be but otherwise that a citation for contempt would not empower the Court to inflict penalties for its violation.

89 The COURT. In the Court's opinion, and the Court doesn't rule that it did, if the defendants in this case disregarded entirely that restraining order then they are guilty of contempt of Court, whether the Norris-LaGuardia Act applies or does not apply. That, in this Court's opinion, is the law.

Mr. PADWAY. Please don't consider me disrespectful or facetious because I wouldn't do that in this or in any other Court, but I will ask Your Honor to reserve that judgment and read our brief and the cases cited. You may decide otherwise.

The COURT. I know what you mean, but I don't want any doubt in anybody's mind about the fact an individual cannot simply take the law into his own hands and decide for the Judge what the law is, in advance, and disregard a restraining order. If that can be done then we have simply got anarchy, that is all.

Mr. PADWAY. May it please the Court, then I am saying this—again not facetiously—that the United States Supreme Court has preached anarchy in the Thomas v. Texas case.

The COURT. The Court doesn't agree with you at all, sir.

Mr. PADWAY. Give me the benefit and indulge me to say that
90 in the Thomas v. State of Texas case an injunction was issued stating that if Thomas came to Texas and held union meetings for organization purposes, in violation of the statute of Texas, Mr. Thomas would be jailed.

The COURT. That is a clear case of judicial usurpation, Mr. Padway.

Mr. PADWAY. Why?

The COURT. Of course, I agree with you that if I were to pass an order which said:

You must stand out here in the street from ten o'clock until twelve tonight in the rain, and you didn't do it I agree with you that that would be an act of judicial usurpation and you could not be punished, and a writ of habeas corpus would take you out of jail. But what I am saying is that in this case there was a matter which justified judicial determination. There is nothing in this situation to indicate judicial usurpation, and, therefore, if the defendants disobeyed the Court's order the defendants are guilty of contempt of Court.

Now, of course, I am saying that in order to give you all the opportunity you want, when the time comes, to argue to the contrary.

Mr. PADWAY. Well, I am arguing to the contrary now, and I would have to argue this, that if that is so then not only should Mr. Lewis be punished, but his lawyers, including myself, should be, be-
91 cause we certainly have given him a different interpretation of the law, and I may have acted erroneously.

The COURT. You know Harry Sinclair once said to Judge Hitz that "All I can say is I did what my lawyers said," and Judge Hitz said, "The cemeteries are full of people who took the doctor's advice."

Mr. PADWAY. That is very definite, but I think I may say quite definitely that Mr. Lewis will not go to the cemetery because of this litigation, not until at least his Maker calls him there. I am satisfied of that.

The COURT. I am not suggesting that, but I am suggesting that the fact he proceeds on the advice of an attorney is not sufficient entirely to justify his conduct if he did wrong, and that has not been decided yet.

Mr. PADWAY. No, I am not citing that as an excuse for what Mr. Lewis did, has done, or will do, but I cite that merely as a construction of the law which we indulged in and which we gave to Mr. Lewis; advice which we still feel is good advice, and we still feel that the cases we have cited, and I know if Your Honor will examine, will probably bear us out. If they don't then I am simply in error on the judgment I present—this Court's judgment, rather—on the analysis of cases, but that, of course, decides nothing, because Courts and counsel have differed on analyses before.

92 Let us take the straight issue, as presented by the Government, namely, a sovereign function. Is the Government now engaged in a sovereign function, assuming that the law is the law?

I contend the Government is not engaged in a sovereign function at all, no matter how important the controversy may be or how important the cessation of this work may be.

In the first place, the importance of the cessation of work and its reaction upon the body politic, and the results from it, are no different than if it were in private hands than in the Government hands. In other words, the results are the same, and not for a moment will the Government contend that the Norris-LaGuardia Act wouldn't apply if it were in private hands. So we should not be confused or misled by the desperation, to use a harsh term, that we find ourselves in because of the cessation of employment.

What we are interested in, however, is this fact: Is it a Government function? If it isn't a Government function the results would be the same, the Norris-LaGuardia Act would apply, and the Court would be governed by that.

Now, the Government says this is a Government function, and the Norris-LaGuardia Act does not apply, and, therefore, this

93 Court had the right to issue the decree. Well, there is a good deal of factual matter——

The COURT (interposing). I think the Court will take a recess until one forty-five.

(Thereupon, a recess was taken *until* at lunch until 1:45 o'clock p. m.)

94 AFTER RECESS

(Thereupon, at 1:45 o'clock, p. m., the proceedings were resumed at the expiration of the recess.)

The COURT. Proceed, Mr. Padway.

Mr. PADWAY. May it please the Court, during the noon hour I had occasion to read that portion of the record which was made here in court on Monday and I noticed there that the Court said, in discussing this problem of contempt, that you were applying Section 385 of the U. S. Code dealing with the Judicial Code and judiciary.

Do you have Title 28, Your Honor?

The COURT. I have it here.

Mr. PADWAY. Now, it may be 387, I am told.

The COURT. I don't remember, sir, making any specific statement about which section would ultimately apply. 387 was followed because that appeared to give the defendant an opportunity to purge himself of the alleged contempt if he admitted it. It may very readily turn out, Mr. Padway, that Section 389 is the one which applies.

Of course, if the Norris-LaGuardia Act is applicable, none of them apply.

Mr. PADWAY. No, no. That is correct.

Now, I think that the argument I indulged in this morning respecting the right of this Court to punish for contempt where the
95 Court determined it had jurisdiction even though the order was, let us say, illegally issued, it has been resolved by the U. S. Code.

The COURT. Mr. Padway, I suspect that if the Norris-LaGuardia Act applies, it might be a contempt, but I would not imagine that the punishment would very seriously interfere with any body's comfort.

Mr. PADWAY. In view of that, I am very greatly relieved and I am going to lay down this statute and proceed to another point.

That is the only consistent view that should be taken with the writ if the Norris-LaGuardia Act applies.

Now, I would like to take a little time—Your Honor has been good enough to indulge us in time because of the importance of the question—in an analysis of the record as it is disclosed in the pleadings of the Government, which, in our view of the case, demonstrates that this is not a sovereign function as is embraced within some of the references of the brief of the Government; and it is exceedingly important, and therefore I would like to state our position in some detail.

Exhibit A of the complaint is Executive Order No. 9728 and provides in part as follows:

"The Secretary of the Interior shall act through or with the aid of such private instrumentalities or persons as he may designate.
96 The Secretary of the Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

"Thus, we have (a) the Government allegedly performing a sovereign function through private persons and instrumentalities"—and that is not generally the case.

I don't say that is determinative, but I will lead up to see where we get to:

This utilization of private instrumentalities in what is alleged to be a sovereign function.

"(b) The Government, allegedly acting in its 'sovereign capacity,' turning over the entire 'managerial functions' to private persons."

Now, Exhibit B of the complaint, the so-called Krug-Lewis Agreement, by its terms establishes a contract covering in detail the wages, hours, and working conditions of the employees who work in the bituminous coal mines, a contract which is wholly inconceivable as applicable to "sovereign" employers.

Even more, the Krug-Lewis Agreement, incorporating, as it does, agreements previously made with the private owners of the coal mines, affirmatively maintains a union-shop condition in the bitumi-
97 nous coal mines, something completely unheard of as respects ordinary Government employees.

And that is certainly true with respect to Government and Civil Service employees where, as we know, what is commonly termed a closed shop is not permissible under law.

In addition, the Krug-Lewis Agreement, like Executive Order No. 9728, shows on its face that the Government's participation was neces-

sarily temporary, whereas sovereign functions survive as long as the sovereign power itself does.

Three, Exhibit F of the complaint, Captain Collisson's letter to Lewis of October 22nd, 1946, states in part as follows:

"Such an agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely the return of the mines to private operation."

And that last, namely, the return of the mines to private operation, is significant as divorcing this from a sovereign function of the Government with respect to the right to issue this injunction.

Similarly, Exhibit J of the complaint, letter from the Secretary of Interior Krug to Lewis of November 14, 1946, states in part as follows:

"I am obliged to inform you that certain of your proposals are
98 of such a fundamental nature that they should be directed to the owners and private operators of the bituminous coal mines rather than to the Government, which is only the interim custodian of these properties."

The Court. What is the date of that letter, sir?

Mr. Padway. The date of that letter, if Your Honor please, is November 14, 1946.

Now, that letter proceeds further—I will say to the Court that the letter in its entirety is not set forth here, but I believe can be produced. I will read those portions which are applicable to the argument I am making.

"I am convinced that any substantial change in wage rates and hours of employment made by the Government at this time would postpone for an indefinite period the return of the mines to their owners, and would thwart the expressed and sincere wishes of all persons concerned for genuine collective bargaining between management and labor in the bituminous coal industry.

"It would contradict this policy, and be inimical to the best interest of the coal miners, and of the country, should the Government prolong indefinitely its temporary role as a substitute for one of the parties in the collective bargaining which must be the foundation of a healthy coal industry."

99 Now, that letter, merits some discussion.

I think that letter tells the story more eloquently than anyone can state with respect to the sovereign functions.

Government does not in the exercise of sovereign functions tell a party to a particular agreement or to the enterprise itself, "Go and bargain collectively with other persons." The Government should be fair with us in this respect, that if the Government is unwilling to sit down and bargain with the other party to the controversy, namely, the United Mine Workers, and the Government assigns as a reason, "Go and bargain with the operators, with the owners of those mines," it should not come here and say "Don't apply the Norris LaGuardia Act; don't give these workers the protection that they otherwise would have if the mines were owned and controlled privately."

The Court. Is it your argument that the Government refused to negotiate with the union in accordance with Section 5 of the Smith-Connally Act?

Mr. PADWAY. We do say that, and we say to the Government did not only that; the Government was shooing us away.

Here was Mr. Lewis asking for dates——

The COURT. I may be mistaken, but I had not gotten that impression from the pleading.

Mr. PADWAY. Well, Your Honor will get it from the record, I am pretty sure.

100 Here is Mr. Lewis asking the Government to take up these matters with him, and he is asking for dates and appointments, as was related here this morning by Mr. Hopkins, and here the Government says, "Why, we are only half-hearted temporary custodians. You go and bargain with them."

Now, if it was the position that we go and bargain with them, and by them I mean the private owners of these mines, then it should not ask that we be deprived of the protection that we would have with said private owners. If we were bargaining with private owners, if we were bargaining with them, we would have the protection of the Norris-LaGuardia Act undoubtedly. I think almost concededly.

But here the Government is saying this: "We don't want to take up these questions with you. Take them up with the owners of the mines"; and then when Mr. Lewis insists that the Government live up to its contract——

Mr. SONNETT. If the Court please, I have listened to counsel make statements of alleged fact for some fifteen minutes, which are not true. Our witnesses will be produced in open court subject to cross-examination.

101 In the meantime, it seems to me that counsel's argument to the extent that it is relevant at all, is relevant to the mitigation of punishment, perhaps, but not to the fact of contempt. We will produce our witnesses. Let counsel prove his facts at the right time, and in orderly manner as this Court normally does in every case.

The COURT. Well, of course, Mr. Padway's argument is not at this time directed directly to the issue of the Norris-LaGuardia Act or to anything else that I remember that is set forth in this motion.

Unless you get too far afield, though, I am not disposed to interfere with your argument, sir.

Mr. PADWAY. Now, if the Court please, I am assuming——

The COURT. I mean too far afield with the issue that is before us now.

Mr. PADWAY. No. But I am assuming that the Norris-LaGuardia Act does apply, and I am also assuming that what appears in the complaint as exhibits are truthful exhibits. I am commenting on those exhibits. I am commenting upon an argument that dwells upon sovereign functions, and I am addressing this Court in this manner by stating that we have not here a sovereign function on the basis of the correspondence between the Department of the Interior and its officials and Mr. Lewis.

102 Now, if that is not pertinent, I don't know what is. If the exhibits attached to this complaint and before this Court now are not the subject of comment, I don't know what is.

I am trying to demonstrate here that the assumption on which the Government proceeds is incorrect.

The Government proceeds that it is a sovereign function. Assuming that the Government contends, further, that we should be punished

for contempt, we are here on a contempt proceeding. We say that we are not subject to contempt because there was not a Governmental function—not a Governmental function, but a sovereign function—and that being so, then it follows, as we say, that the Norris-LaGuardia Act applies, and if it applies, this Court, then, should apply that Act and grant us the protection we ask.

I don't know of a more pertinent and logical and more applicable argument that can be made. These are the Government's exhibits. Were they written or were they not? Did Mr. Collisson say that the Government is a temporary substitute? Did he say he wanted to turn them back? Did he say, "Go and bargain with the private owners"?

I can see why the Government is slightly disturbed, because the Government is in a dilemma, and whichever horn of the dilemma it takes, it is just a little bit, to use a colloquial phrase, out of luck.

103 In other words, it says, "Go and bargain with these other persons if you want wages, hours, and working conditions, because it is their minds, and you must take the matters up with them," and then he says, "Oh, lo and behold, we have control of these. Don't you dare do the things that you could do if you bargained with them."

I will ask one question and then answer it myself, if the Court please. I pose this question and make the answer, and that is this:

"What would happen if Mr. Lewis went and bargained with these employers and, as we suspect, they would not agree, or would refuse his terms and conditions? Then what would the Government say?"

"Well, you bargain with them, and the only alternative left to a union when bargaining cannot be agreed upon, is to exercise the right not to work if the terms and conditions are not satisfactory, and the Government arises then and says, 'Yes, you have done what we have asked you to do; you have bargained with these employers, they have rejected your terms and conditions, but stand there; you cannot budge and do anything.'"

The Court. I will hear you, Mr. Padway, but I have closely examined these proceedings very carefully and thought a good deal about those, and there is nothing about the proceedings that indicates to me that the Government avoided any conference or negotiation

104 with the United Mine Workers under Section 5 of the Smith-Connally Act.

Mr. Padway. Well, if the Court please, we are in this position——

The Court. They may have done this as far as the proceedings show up to this time; they may have done this: They may have said, "Now, look, if you insist that this Section 15 of the original Bituminous Coal Agreement applies, why it may be that you can make some arrangement with the owners of the mines which will avoid any serious difficulty."

"You can try that if you want to. If you can make an arrangement with them, the Government has absolutely no objection."

But I have never noticed anything or seen anything that would indicate to my mind that the Government side-stepped negotiations under Section 5 of the Smith-Connally Act.

Mr. Sonnett. Nor is it true, Your Honor, that the Government did. We will offer proof to the contrary.

I cannot believe that counsel is intentionally misleading the Court.

The Court. He has not misled the Court because the Court has its own view about what the proceedings show.

Mr. SONNETT. I have no objection, if the Court please, to counsel reading any or all of the documents before the Court.

105 I do object to his reading portions and trying to characterize the portions which is what he has been doing.

Mr. PADWAY. Well, I should hope that it is the privilege of counsel to characterize, if that is the term that counsel wants to use, but my term is "interpreting" the English language.

I am just interpreting what the Government departments and Government officials and agents have written, and I am injecting nothing in there that is not in there.

Now, if the record that is attached to the complaint—now, I know it hurts, but it is the truth, nevertheless. That is what we were told to do.

We concluded that we had a right to bargain respecting wages, hours, and working conditions.

We did more than that. We said there had been a violation on the part of the Government with respect to weights and other matters. Had we the right to make that declaration and make that claim, it may have in some respects been unfounded—the facts may have proved otherwise—but at least we had the right to make the claim and having made the claim we had the right to bargain respecting them, and we did not have the right to expect the Government to say, "With respect to those matters which we claim to be covered by the contract, go and bargain with the private owners of those companies."

106 The point is it is not a sovereign function. That is the purpose of making this argument. It is not for the purpose of establishing the truth or falsity of the things which are described in the letter. It is to establish that such a letter was written, such an argument was made.

The Government said thus and so; whether it had the right to, or intended to or whether it did, is not the point I am addressing myself to.

I am addressing myself to letters that were sent by the Government to Mr. Lewis in response that the Government live up to certain terms and agreements, and that they bargain with him respecting them, and the answer was respecting those matters, "You had better bargain with the private owners."

And, if he had, I repeat, and if they rejected our plans and our requests, where would we be? The Government would come in as it says now, and say, "You cannot cease work."

Now, I think if there is any doubt about the situation we find ourselves in, that doubt should be resolved in favor of those who are cited here to appear for contempt. The doubt should be resolved in our favor.

My associates hand to me here Exhibit N attached to the complaint which is a letter addressed to Mr. Lewis by Mr. Krug, signed by
107 Mr. Krug, and after the notice of November 15 was sent to Mr. Krug.

It reads, "In view of the important national considerations mentioned by the President in his statement of today, and in view of the official ruling of the Attorney General as to the obligations of the United Mine Workers under their contract, I again urge you to reconsider the position indicated in your letter of today and to enter into

conferences with the Bituminous Coal Operators, Negotiating Committee, without loss of the coal production which is so critically needed at this time."

The COURT. Now, what that letter, as I understand it, meant is this: that you, Mr. Lewis, and United Mine Workers, are violating your contract, and in order to avoid a stoppage of the mines, in spite of that fact if you can negotiate with the owners of the mines, why, do so.

Now, that is what the letter means as I understand it.

Mr. PADWAY. Assume it means just that and nothing more, although I respectfully say that I read more out of it, but assuming that that is all it does say, is that consistent?

Or, I will put it this way; in my view of the case, it is inconsistent with a claim of exercise of sovereign function.

That is what I am arguing now. Your Honor may disagree
108 on that analysis, but I am not misstating the facts as counsel would have you believe. I am drawing a conclusion from that that when such a letter is sent and such answers are given in response to requests that we have made——

The COURT. No; but your request was based on the theory that Section 15 of the Bituminous Coal Agreement was in effect.

Mr. PADWAY. Yes.

The COURT. And the Government could not concede to that. But the Government said, "If there is any way in the world we can get out of this trouble and avoid a cessation or what amounts to a strike and a national calamity, you go to the operators and, if you can deal with them, why, we will pass by the fact that you are not willing, as we say, to abide by your agreement and negotiate under Section 5 of the Smith-Connally Act."

That is the way I understand it.

Mr. PADWAY. Right. It is susceptible to that interpretation, but, nevertheless, that negatives a sovereign function.

Now, the purpose of referring to these letters and correspondence is to indicate to this Court that the record shows that the Government was not acting under a sovereign function, and as a result we are under the Norris-LaGuardia Act. Nothing can be more forceful than these letters. For instance, here is another proposal.

109 "Pursuant to regularized and established procedures in all cases where, under the War Labor Disputes Act, the Government had taken over the administration of certain industries, the Government in the instant case issued formal regulations for the operation of coal mines under Government control, all of which are published in the Federal Register"—and he cites the Federal Register—"thus, Section 5 of the afore-mentioned regulations provides: 'The existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue.'

And another paragraph:

"'All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties.'"—and I underscore that word "title"—"'that title to the properties remains in the owners thereof and that the Government
110 having temporarily taken possession or custody, will assert

only such rights as are necessary to accomplish the national purpose of continued and maximum production.'"

The COURT. Just a minute. That is just what they took them over for, to continue production.

That was the purpose of it, Mr. Padway, to avoid an interruption of production.

Mr. PADWAY. That may very well be true, but that does not make of ownership and control such as this a sovereign function.

Mr. Hopkins reminds me that they specifically renounced—there was a renouncement of sovereign function.

What the Government did is set forth in these rules and regulations, or rather the applicable rules and regulations, those which I read, but they are all of a negative character. They negative sovereign function.

Now, counsel may argue otherwise, but there is no consistency between sovereign function and regulations promulgated in the wording and nature of these regulations.

Now, here, Section 40 proceeds this way:

"None of the provisions of this section 40, and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence by the Administrator in any claim that operations during the period of Government possession and control were for
111 the financial account of the Government."

No interest at all financially.

Here we have the true nature of the administration of the mines under the seizure perfected by the Government, namely, a business enterprise and not a sovereign function. By this regulation, the mine operators have been authorized to retain whatever profits may accumulate during the time the Government administers the mines.

Now, Section 23 (d) is, standing by itself, entirely conclusive of the issue of sovereignty in this case.

It provides:

"Nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment."

Now, here we are told "You are not our employees. You are not working for us. These enterprises are not ours."

And now, I say, we are told by the Government, "We will derive no profits therefrom. You do not work for us."

And now we are told that this is a sovereign function.

Now, I say the entire characterization of the enterprise by the Government itself in its regulations and in the rules promulgated, disavows those necessary elements that would give validity to
112 the sovereign function.

Now, Section 24 of the regulations provides in part as follows:

"The companies are expected to meet all Federal, State, and local taxes, contributions, and assessments, in the customary manner."

We need hardly remind the Court of the basic fundamental principle that a sovereign, exercising sovereign functions, may not be subjected to tax by any other sovereignty.

Citing M'Culloch v. Maryland.

Section 24 also provides in part:

"The mining companies are deemed to remain subject to suit as heretofore."

Now, here is a private enterprise which the Government recognizes as a private enterprise, maintains as a private enterprise, exercises its taxing authority, every element of which is inconsistent with a sovereign function, and now we are told that we lose the benefits of the rights of other law such as in the Norris-LaGuardia Act and similar laws, because the Government has take ontrol.

In other words, the Government itself imposes legal obligations that are to its benefit in the matter of taxation upon the companies and holds them subject to those laws, either gives them the benefit or the detriment of them, but the like benefit or detriment should not
113 be accorded us by similar laws that protect our interests and our rights. And I say that is not consistent with the sovereign function.

I think that I will dwell no further on that point. If the record that is attached to the exhibits as part of the record in the complaint, then I think the Government out of its own mouth, so to say, disqualifies itself in the matter of sovereign function.

If there are other reasons that the Government has and may claim for the request of the order, that is another thing, but on the basis of sovereign function, the Government has said, "We are not engaged here in a sovereign function."

Now, my associate suggests that a page or two of the following article be read to Your Honor, and that is:

"C. This is a case involving and growing out of a labor dispute. That being so, and there being a complete absence of compliance with the requirements of the Norris-LaGuardia Act, the Court had no jurisdiction to issue the temporary restraining order and hence the order was void ab initio."

As shown above, the Government seeks to escape the str tures and the limitations of the Norris-LaGuardia Act on the single and exclusive assertion that the Government in administering the bituminous coal mines is acting in a sovereign capacity.

114 By necessary implication, therefore, the Government thereby concedes that if their point of distinction is without merit then under the language of the Norris-LaGuardia Act and the authoritative decisions interpreting and applying it, this case arises and grows out of a labor dispute. Accordingly, it may perhaps be excessive to analyze that language and those decisions and to show their complete and conclusive application to this case.

Nevertheless, in order that there be no possible doubt, we think it appropriate briefly to discuss the statute and the relevant adjudications as they may apply to the undisputed facts in this case.

Section 13-C of the Norris-LaGuardia Act provides in part as follows:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment."

That this case involves a controversy concerning terms or conditions of employment will not, indeed it cannot, be denied. It is affirmatively and unequivocally set forth in explicit terms in the pleadings filed by the plaintiff. Thus, the immediate controversy which eventuated in the notice of November 15, 1946, was initiated by the Lewis letter of October 21 addressed to the Secretary of Interior, and which is Exhibit E of the complaint.

115 Mr. Lewis stated to Secretary Krug that the Government had misinterpreted the agreement respecting pro rata vacation payments and in interpreting the manner in which railroad weights rather than tipple weights were being used to compute the payments due the Welfare and Retirement Fund, both of which clearly are encompassed within the statutory phrase "terms or conditions of employment."

In addition, in that letter, Mr. Lewis requested a conference for the purpose of negotiating new arrangements affecting wages, hours, rules, and all other pertinent matters, which too clearly is within the meaning of the statutory phrase "terms or conditions of employment."

Now, is that status of a labor dispute lost by a mere assertion on the part of the other side—rightly or wrongly—"Mr. Lewis, you are wrong, and we don't want to have anything further to do with you with respect to these matters."

And I suspect that that was, while not definitely stated by the Government, that that was their idea.

In other words, it did assume, and that is the only position on which you can say it assumed the status of an employer, was that "We are not willing to negotiate with respect to that."

116 The old stereotyped answer given by employers prior to the passage of the National Labor Relations Act, where collective bargaining in good faith was made compulsory, the Government throughout in its attitude and in its action in this suit has simply adopted the philosophy of the good old-time reactionary employer in handling this matter.

Now, those are my opinions, and I express them based upon such knowledge as I have of the controversy.

But we may go even beyond that. Under the Norris-LaGuardia Act, Section 1, "It is not necessary that an actual labor dispute be the direct and immediately proximate cause of the request for an injunction. It is only necessary that the case involve or grow out of a labor dispute, and any possible suggestion that the instant case does not involve or grow out of a labor dispute must necessarily be whimsical and frivolous in the extreme, for the very presence of the executive department of the Government in this case, and in this cause, is necessarily premised upon its alleged authority under a statute officially designated as the War Labor Disputes Act.

Pursuant to that Act, Executive Order No. 9728, Exhibit A of the complaint, includes among other things an express Presidential finding and proclamation that there are threatened interruptions in the operation of the mines producing bituminous coal as a result of
117 existing or threatened strikes and other labor disturbances.

Hence it is clear that the crucial issue in this entire controversy, namely, the dispute respecting the termination date of the Krug-Lewis Agreement, is one that manifestly involves and grows out of a labor dispute. For, had there been no labor dispute, there would not have been and could not have been any Krug-Lewis Agreement and there could not have been any controversy over any clause within that agreement.

Moreover, the labor dispute between the private mine operators and the union which was the occasion for the Government seizure of the mines on May 21st, 1946, has never been resolved.

The COURT. Now, what has never been resolved?

Mr. PADWAY. The dispute between the private mine owners and the United Mine Workers, which gave rise to the seizure of these mines, has never been resolved.

So there is a continuing labor dispute up to the present moment except as resolved by agreement for the moment or for the time the Government is in control and in the agreement that was entered into by Krug and Lewis.

Now, I think that we have made clear, or endeavored to make clear without limitations, that we have here a labor dispute. That the Government is not exercising a sovereign function.

118 Now, may I address myself a few moments to a very important phase of this case which has to do with the injunctive decree.

The decree was worded, in my humble opinion, in the language of the Norris-LaGuardia Act—or War Labor Disputes Act, the Smith-Connally Act. The language was accepted from that statute and utilized in the decree, and in other respects it has adopted the old-time injunction which has been adopted by employers who sought to restrain workers in the exercise of rights and functions in cases similar to Duplex-Deering case, Bedford Stone Company case, the Debs case, and a host of cases in between.

It is remarkable how the Government in this instance, asking for a restraining order, should have jumped or pounced upon these cases that were so vigorously condemned in the committee reports leading to the Norris-LaGuardia Act.

Let us take, for instance, this language. I am addressing myself now to the constitutional denial of freedom of speech, freedom of the press, and peaceable assemblage, and I maintain that the injunction falls in that it denies to the United Mine Workers, its officers and members, the right to exercise those constitutional guaranties.

Here is the language from the Smith-Connally Act, "And from coercing, instigating, inducing, or encouraging the mine work-

119 ers at the bituminous coal mines in the Government's possession or any of them, or any person to interfere by strike, slowdown, walk-out, cessation of work or otherwise."

Now, that is addressed to the single individual as well as to the collective employees. Because, as pointed out now, "ordered that the defendants and each of them and their agents, servants, employees, and attorneys, and all persons in active concert or participation with them, be and are hereby restrained."

120 Now, it is very significant to us that in this day and age we should find the Government petitioning to deny to us constitutional guarantees of freedom of speech and freedom of the press.

It may well be that tomorrow the United Mine Workers may desire to picket those mines. Picketing is merely a form of peaceful patrolling, as a notification or an announcement to the world that a grievance exists between those who picket and their associates and members and the particular employer or mines.

Freedom of speech, if the Court please, the guaranty of freedom of speech is expressly imposed upon—I mean the right and the denial of that right is expressly imposed upon the Government. As a private individual you, Your Honor, may restrain me from speaking. If I am

in your employ and you don't want me to talk to your competitor, you may say, "I don't want to talk to that competitor, or I will discharge you if you do." That is your right.

The guarantee of freedom of speech or freedom of the press is a constitutional guarantee to the individual as against his government; that those are rights the Government cannot take away from him. They are as hard and fast, though not quite as old, as the guarantees exacted from King John in 1215. They are consistent with the principles on which the revolution was founded here. They are
121 enunciated clearly in Tom Paine's "Common Sense," and the pamphlets known as the "Crisis," and it was for those guarantees that we fought, and it was a guarantee by the Government that against the Government they assert those rights and we will not take them from you.

Now, whether it be by statute or be by injunctive decree, it was decided by the United States Supreme Court in the Swing case that an injunctive decree that deprives workers or persons of those rights are as unconstitutional as though it were a statute or any other law that deprived us of it.

This decree here, if we were to encourage a continuance of the cessation of employment, individual or in concert by picketing, by exercising that right of freedom of speech, we would be in violation of the injunctive decree.

The United States Supreme Court in the Swing case says that the Court cannot, by an injunctive decree, deny workers the right to peacefully picket, peacefully patrol, persuade others, or exercise the freedom of speech.

We have been told to withdraw a notice which was published, sent to our members, or at least brought to their attention, sent their employers and published in that way, which is not any more than an exercise of freedom of speech. Not only have we been told we cannot do it, but having done it prior to the issuance of the injunction,
122 we are now told to recall that exercise of freedom of the press or be punished for contempt.

Freedom of speech, if the Court please, is dwelt upon in connection with picketing in labor injunctions in one of the most momentous opinions issued by the Supreme Court of the United States.

The Court. The Court understood from the proceedings that the Government proceeded on this theory, that whenever the President of the United Mine Workers of America proclaimed that no contract existed, or gave notice that no contract existed, that immediately the employees ceased to mine coal.

Under Section 6 of the Smith-Connally act it is illegal during the emergency to incite to strike.

Your theory is, as I understand it, the fact that a notice was given that no contract existed, even though that notice would inevitably result, as was known by the person giving the notice, in a strike, that it was not illegal.

I think it was Thomas Grey who said, "A rose by any other name is still as sweet." And of course the Government will naturally argue that and contend that a notice which would inevitably result in a strike is not an incitation to strike, is simply a subterfuge. That is what their argument would be, whether it is true or not correct.

123 Mr. PADWAY. I am not in disagreement with Your Honor's interpretation of the War Disputes Act, but I should argue vigorously here, if that Act were before the Court as an issue, as I have done in three other courts, that there is no more constitutionality to the Smith-Connally Act, in depriving workers of the rights that they have with respect to freedom of speech and with respect to press and assembly.

The COURT. The Court does not see that freedom of speech is involved, and the Court understands, as you understand, that this Act was a war emergency act.

Mr. PADWAY. A war emergency act I think it was, by principle at least, held—the name escapes me for the moment, but Justice Hughes wrote the opinion; the phrase is this: That the War Emergency does not bring into play powers which are unconstitutional.

I think Ex Parte Milligan may be the case I have in mind. It doesn't create rights that are unconstitutional, or obligations that are unconstitutional, but we find in war emergencies that powers that are latent under the Constitution or not previously exercised because there was no occasion for them, may arise.

The COURT. That is exactly the point, Mr. Padway.

Mr. PADWAY. If the Court please, that is the point we make; that regardless of all those you cannot by the Smith-Connally Act or

124 by any other Act deprive a worker of the right to exercise his freedom of speech. That is constitutional.

Either the decisions mean what they say or they do not mean what they say. Either the constitutional guarantee is there or it isn't there. If men have the right under the Constitution——

The COURT. There is nothing in this proceeding so far to show any deprivation of freedom of speech within the meaning of the Constitution.

If the United Mine Workers of America had no right to call a strike, then the mere fact that they called a strike by serving a notice, by what, as I said before, the Government will say was a subterfuge, does not make the denial of the right to post a notice the denial of freedom of speech.

Mr. PADWAY. Well, if the Court please, we are obliged to take a contrary view——

The COURT. Naturally; that is the reason you are here.

Mr. PADWAY. And I think that, not because of any extraordinary persuasive powers I have, relying upon the judgment of this Court upon deliberation I am quite sure, though that is probably an extravagant phrase to use at this moment, Your Honor will agree with me.

The COURT. Well, I have agreed with you before and have disagreed with you.

125 Mr. PADWAY. Yes, sir. Let us see how far I will succeed now in bringing Your Honor around to an agreement on my thoughts.

Mr. SONNETT. I am reluctant to interrupt. However, the restraining order which Your Honor signed will expire at 3 o'clock today. Counsel has been talking all day, and I have not had an opportunity to reply to that. I have not yet asked for an extension of that order which I think exists, for another ten days. If Your Honor will grant the extension of the temporary restraining order for another ten days I am content to wait until counsel finishes, however long it takes.

The COURT. Very well.

Mr. SONNETT. Do I understand the extension is granted?

The COURT. Yes, sir.

Mr. SONNETT. May the record indicate that the individual defendant is in court at the time of the granting of the extension?

The COURT. As I understand it, it was stated by defendants' counsel that Mr. Lewis was here not only in his capacity individually but representing the United Mine Workers. Isn't that true?

Mr. HOPKINS. Yes.

126 The COURT. But I expect that order should be in writing, sir.

Mr. SONNETT. We will prepare it, if the Court please, as soon as we are able to do it. I would respectfully request that the Court's extension at this time, entered in the record in the presence of counsel, constitute an extension for ten days of the restraining order, within the rules.

Mr. HOPKINS. We can, from the defendants' viewpoint, make no concession to the Government here in reference to its expressed desire as now just made, asking this Court for an extension.

The COURT. The only purpose of the extension, sir, is to conclude this case, that is all. I do not know how long it will take.

Mr. HOPKINS. There may be, from the defendants' viewpoint, other considerations that we do not undertake to bring before this Court at this time, other than to read an excerpt from Rule 65.

The COURT. I think the Court better take a recess for fifteen minutes.

Mr. SONNETT. May I say, Your Honor, we have it already coming up and we will have it presently and the Government will have it at the conclusion of the recess.

The COURT. Yes; I know, but you ought to have it before 3 o'clock.

127 Mr. SONNETT. Yes, indeed. We will have it in a few minutes.

Mr. HOPKINS. Then we may be heard on this point after the recess?

The COURT. I understood that it wasn't necessary to have a recess because you have it prepared already. I can hear you now. It will not be necessary to have a recess. Proceed.

Mr. HOPKINS. If Your Honor please, in order that the defendants' position be clear, we now ask Your Honor's indulgence to hear Mr. Kaiser upon this precise point.

Mr. SONNETT. May I submit, if the Court please, before Mr. Kaiser commences, a proposed form of order extending the temporary restraining order, for such disposition as Your Honor sees fit to make.

Mr. KAISER. If the Court please, in opposing this request, we rely exclusively on Rule 65, from which I now read:

"and shall expire by its terms within such time after entry, not to exceed ten days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period."

So that the only possible ground for extension, aside from consent of the defendants, is good cause shown.

128 The COURT. Good cause? This case is on trial. That is good cause.

Mr. KAISER. That is precisely what I am about to address myself to, if Your Honor please. I continue to read from the same rule:

"The reasons for the extension shall be entered of record. In case

a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence of all matters except older matters of the same character."

The COURT. That is referring to a temporary injunction, not to another restraining order.

Mr. KAISER. "In case a temporary restraining order is granted without notice, the motion for a preliminary injunction——"

The COURT. But this restraining order is granted on the provision of the rules which states that it lasts for ten days unless extended by the Court for good cause.

Mr. KAISER. For good cause; but, if the Court please, if I may be heard for a moment——

The COURT. I know, but I can't hear you too long about this.

Mr. KAISER. But if Your Honor please, the purpose of this rule is not to permit to go too long an ex parte restraining order without opportunity to argue on the motion for temporary injunction. If the Court please, in an ordinary case, if the plaintiff desires indefinitely to continue an ex parte order he need only cite for contempt. That is the reason the rule says that the argument on the motion for a temporary injunction which will continue the restraints of the temporary restraining order must take precedence over all other causes.

Mr. SONNETT. If Your Honor please, I am sorry again to interrupt. The several counsel for the defendants have been arguing before this court for three and one-half hours approximately.

In view of the imminent expiration of the time, I think that good cause has been shown beyond any test required by any and all rules.

I respectfully request that Your Honor sign an order in the form submitted; that the Clerk be directed to certify a copy, and that the Marshal be instructed to serve that or that the defendant's counsel accept service for the defendant who is here in court.

The COURT. The motion is granted.

Mr. HOPKINS. If you Honor please, let it be noted for the record that neither do we waive, or under the suggestion made by counsel, accept service. With due deference to the Court we take exceptions to Your Honor's ruling and now make notice of appeal upon that point.

The COURT. Proceed.

Mr. HOPKINS. Wait just a second. If the Court please, we cannot, we respectfully submit, undertake to accept service.

If the Government undertakes, as it does, sir, to ask for this order and it is issued, then we call for strict compliance of the rules, and we cannot accept service of it.

Mr. SONNETT. We will undertake to serve Mr. Lewis, if the Court please, upon his departure from this building. I would respectfully request a mandatory direction from Your Honor to Mr. Lewis individually and as president of the United Mine Workers to take or send no communications out of this building pending an opportunity on the part of the Government to serve him.

The issues at stake are entirely too great to be enmeshed in three and one-half hours of technical, legal argument such as counsel has been resorting to all day, and then for counsel to assert they will not accept service of an order of this sort.

The COURT. Proceed.

Mr. HOPKINS. To which we take due exception and note our appeal, Your Honor.

The COURT. Will counsel approach the bench?

(Thereupon, all counsel approached the bench and the following proceedings were had:)

The COURT. Is it the theory of counsel that this order can't be served in the courthouse?

Mr. SONNETT. Not in the courthouse, Your Honor, as such. I think Your Honor can issue a mandatory direction, in the presence of the court.

The COURT. That has already been done. All right, gentlemen.

132 (Thereupon, all counsel resumed their places at the trial table, and the following proceedings were had:)

Mr. PADWAY. May it please the Court, I regret to say that I see no ambiguity in the order issued by Your Honor with respect to the right to picket.

I must construe that, as it is written, as a denial of that right. If, of course, counsel will concede and the Court would say that we are not denying you the right to picket, then, of course, the argument I am about to make——

The COURT. The Court says, Mr. Padway, and says respectfully, that the order means exactly what it says.

Mr. PADWAY. Well, then, exactly what it says means to me that we have no right to picket, patrol the mines, because that in and of itself would be an encouragement or an inducement to prevent operation or to continue cessation of the refusal to work, failure to work, whatever you wish to call it. Consequently, I must then address myself on the basis of that right.

We have, of course, a number of cases that deal with that subject, but particularly the very earliest case with respect to picketing and the right to do so in the exercise of freedom of speech, was the Senn case. Again I make these references rather to emphasize a knowledge of the subject than to be telling the Court my experience in the matter, but that was a case that I tried in the courts and argued before

133 the Supreme Court of the United States.

I had endeavored for years, in the course of my experience with this branch of the law, to have the courts rule or look upon people picketing, or patrolling, as synonymous with freedom of speech. The occasion did not arise to present those issues to appellate courts, but they did arise soon after the Norris-LaGuardia Act was passed, or the State Norris-LaGuardia Act of Wisconsin and the Federal Act, and, as a result of that case that I'm about to refer to, the Senn case, a case that happened in Milwaukee, Wisconsin, the question was raised by the other side as to the right to peacefully picket on constitutional grounds.

I urged that before the Supreme Court and, while the Supreme Court did not go fully into the question, it showed which way it was thinking in the pronouncements made in that particular case.

The Court said there, in Senn versus Tile Layers' Protective Union, as follows:

"* * * Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

I quote that not as a definite pronouncement that picketing is synonymous with freedom of speech, but that the right to make
134 the announcement of facts concerning a labor dispute, which is all that the statement of Mr. Lewis to the Department and to the Government was, on November 15, but then came the issue very directly in Thornhill versus Alabama, because there the statute inhibited people picketing in connection with a labor dispute.

Again it was my privilege to have argued that case in the Supreme Court of the United States. The facts were more direct than they were in the Senn case, and I urged upon the Court that peaceful picketing was merely a form of freedom of speech and guaranteed by the Constitution.

The Court there said:

"In sum, whatever the means used to publicize the facts of a labor dispute, whether by printed sign, by pamphlet, by word of mouth or otherwise, all such activity without exception is within the inclusive prohibition of the statute.

"Freedom of discussion, if it would fulfill its historic function in this Nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period."

The COURT. We will suspend for just a moment.

(Thereupon, a deputy marshal escorted Mr. Samuel L. Kaufman before the Court and the following proceedings were had:)

135 The COURT. The Court is informed, sir, that you have been endeavoring to talk to the jury in the other courtroom, the jury which will be empaneled in this court, if it is empaneled, and what have you to say about that?

Mr. KAUFMAN. First, I request, if I am in order, a copy of the document which brought me here. It was just shown to me.

The COURT. It is not necessary to do that.

Mr. KAUFMAN. It is not necessary? Then that is quite all right.

The COURT. If this contempt was committed, it was committed close enough to interfere with the proceedings.

Have you or have you not attempted to talk to the jurors about this case?

Mr. KAUFMAN. In the form in which you put the question, my answer must be "No," but I have a voluntary statement to make, if you desire it, sir.

The COURT. I will put another question: Will you agree not to interfere or talk to the jury any more about this case?

Mr. KAUFMAN. I resent that question most respectfully, because I did not interfere with the jury. What happened was that there is a toilet over there and I went in there——

The COURT. I am just asking you if you will agree not to do it.

136 Mr. KAUFMAN. Not to do what?

The COURT. Not to talk to them any more about this case.

Mr. KAUFMAN. I haven't talked to them. I talked to only one man, a very fine gentleman, and I talked to him about the weather, and I told him that recognizing that as a group of jurors that I recognized

the limitations on the jury, and I discussed what a fine day it was, and nothing else, and it was one man only, and I say this with all great respect for this Court.

The COURT. You haven't talked with any of the jurors in this case?

Mr. KAUFMAN. I believe I have answered the question by saying I talked to one man, a man wearing a gray suit, a tall gentleman, and the only subject matter I covered was what a fine day it is.

The COURT. Some of the jurors reported to the deputy marshal that you attempted to talk to them.

Mr. KAUFMAN. I will be glad to face any of them.

The COURT. The Court has nothing further to say than this: Hearing no further complaints, the incident is ended.

Mr. KAUFMAN. I believe, Your Honor, the incident is not altogether ended.

The COURT. It is ended as far as this Court is concerned. I cannot hear you further.

137 Mr. KAUFMAN. I expect an apology.

(Thereupon, Mr. Kaufman left the courtroom and the following proceedings were had:)

Mr. PADWAY. May it please the Court, on the question of freedom of speech, in the Thornhill case the United States Supreme Court said this:

"Freedom of discussion, if it would fulfill its historic function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period.

"In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution. It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned. The health of the present generation and of those as yet unborn may depend on these matters, and the practices in a single factory may have economic repercussions upon a whole region and affect widespread systems of marketing * * * labor relations are not mat-

138 ters of mere local or private concern. Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable to the effective and intelligent use of the processes of popular government to shape the destiny of modern industrial society. The issues raised by regulations, such as are challenged here, infringing upon the right of employees effectively to inform the public of the facts of a labor dispute are part of this larger problem. We concur in the observation of Mr. Justice Brandeis, speaking for the Court in Senn's case: 'members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'

"The range of activities proscribed whether characterized as picketing or loitering or otherwise, embraces nearly every practicable, effective means whereby those interested—including the employees directly affected—may enlighten the public on the nature and causes of a labor dispute."

Now then, we must urge upon this Court that this injunction, as we interpret it, prohibits us from doing the very thing that this Court said here we have a right to do. We have the right to picket.

The COURT. That was a Norris-LaGuardia case, wasn't it?

Mr. PADWAY. No, sir; that was a constitutional question on a statute, a so-called antipicketing statute in Alabama.

The COURT. Yes.

Mr. PADWAY. At the same time the United States Supreme Court handed down an opinion affirming the Thornhill case, but which dealt with a similar inhibition in an ordinance passed by a municipality in the State of California. This is so strong and conclusive that there is no escape from the fact that the decree here, if it enjoins our people from going out tomorrow, peacefully and in the presence of a mine, or mine entrance, wherever it may find its miners, and talk to them respecting their going or not going to work, their controversy with the Government or whoever it may be with is enjoined because it induces or persuades or encourages the continuance of the cessation of employment, then that decree is unconstitutional and a denial of freedom of speech.

In Carlson versus California—this is the text of the opinion, or part of it, it is said:

"The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence. It cannot be thought to differ in any material respect from the statute held void in Thornhill's case. The carrying of signs and banners, no less than the raising of a flag, is a natural and appropriate means of conveying information on matters of public concern. For the reasons set forth in our opinion in Thornhill versus Alabama, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word of mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgement by a State."

Now, I say this: it matters not what the so-called Smith-Connally Act says; it matters not what particular device or decree is entered; it matters not who is in control or possession of a mine, factory, or a mill, if this language means what it says, the right to quit work, the right to go on what we commonly term a picket line, to patrol and to ask and to announce and to persuade others not to do the same thing is nothing but the dissemination of information and synonymous with speech which is guaranteed to every person under the Constitution of the United States.

And where in the Swing case the court of Illinois issued an injunction similar to the terms issued in this case with respect to this particular inhibition, the United States Supreme Court said:

"All that we have before us, then, is an instance of 'peaceful persuasion' disentangled from violence and free from 'picketing en masse or otherwise conducted' so as to occasion 'imminent and aggravated danger.' Thornhill versus Alabama, 310 U. S. 88, 96. We are asked to sustain a decree which for purposes of this case asserts as the common law of a state that there can be no 'peaceful picketing or peaceful persuasion' in relation to any dispute between an employer and a trade union unless the employer's own employees are in controversy with him.

"Such a ban of free communication is inconsistent with the guarantee of freedom of speech. That a State has ample power to regulate the local problems thrown up by modern industry and to preserve the peace is axiomatic. But not even these essential powers are unfettered by the requirements of the Bill of Rights. The scope of the Fourteenth Amendment is not confined by the notion of a particular State regarding the wise limits of an injunction in an industrial dispute, whether those limits be defined by statute or by the judicial organ of the State. A State cannot exclude working men from peacefully exercising the right of free communication by drawing the circle of economic competition between employers and workers so small as to contain only an employer and those directly employed by him. The inter-dependence of economic interests of all engaged in the
142 same industry has become a commonplace. The right of free communication cannot therefore be mutilated by denying it to workers, in a dispute with an employer, even though they are not in his employ. Communication by such employees of the facts of a dispute, deemed by them to be relevant to their interests, can no more be barred because of concern for the economic interests against which they are seeking to enlist public opinion than could the utterance protected in Thornhill's case. 'Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution.'"

Now, if the Court please, let us assume tomorrow morning that these workers, or the officers of their unions were to decide, in order to enlighten the public with respect to the cause they are engaged in, because of dissemination of information which is untrue, mis-information, desire to place in the mouths of the mines, or anywhere else if you please where their members may be, or where the public may be, picket sign, or bills or pages of pamphlets or leaflets, or get on the radio, if you please, or make your statements to the press, as is now suggested by counsel, your order prohibits us from doing that, and yet it may be necessary for Mr. Lewis, because it has been done
143 before, to enlighten his workers and to enlighten the American public and to state that our cause is just and that our concerted cessation of work is just, and that we believe we should continue that concerted cessation of work, under the decree that has been issued in this case Mr. Lewis and the others can be cited for contempt. And I say that that flies in the face of the Constitution.

144 I do not know whether you really intended that. I do not know what Your Honor would do if that were brought here. I do not know if the Government even would decide to come here on a contempt charge of that kind, but nevertheless they have come here in this year 1946 with an amazing petition and position and asked this Court to restrain persons under pain and penalty of contempt from actually ceasing work. I do not know. That is the effect of the order.

In their brief they say this is a strike call. It may be termed that and it may not. The evidence will show, but assuming it is a strike, it is a peaceful cessation of work, indulged in by workers who under the Constitution have the right to so act and to so conduct themselves.

And regardless again of the so-called Labor Disputes Act, regard-

less of the Smith-Connally Act, regardless of what Congress may have done by statute, Congress could do no more than the State of Alabama did in denying these fundamental rights to the workers in Alabama, and the United States Court stepped in and said a denial of such a fundamental right runs counter to the Constitution of the United States, and the decree must be dissolved.

And when without statute a decree was issued by the Court in Illinois, in the Swing case, the Court stepped in and said the
145 fundamental right even of those who exercised it, even those who exercised it who were not in the particular employ of the particular employer, and there was no proximate relationship of employer and employee, that, too, was guaranteed by the Constitution and the exercise of that right could not be denied.

Since the Thornhill case came down, if the Court please, there have been a multitude of cases discussing the same subject, and state courts have accepted, as they were obliged to, of course, the principles enunciated by the United States Supreme Court.

Listen to language such as this:

"The exercise of arbitrary power by any department of Government, or agency thereof, is inconsistent with our democracy. Our guaranties against the exercise of such arbitrary power are found in the State Constitution, Article II, Section 35, which provides that 'No person shall be deprived of life, liberty or property, without due process of law'; and Article II, Section 10, that 'No law shall be passed impairing the freedom of speech'; and in the Federal Constitution, 'That no State shall deprive any person of life, liberty or property without due process of law.'

"Whatever our individual views may be on economic contro-
146 versies, such as are involved here, we cannot consent to legislative invasion of constitutional guaranties to the extent for which contention is made in this case. The line of demarcation between police power and constitutional guaranties is not always well defined. Where a law, such as Section 90 here under consideration, impairs freedom of speech, as it does in view of the stipulated facts before us, we have no doubt that it constitutes an invasion of constitutional guaranties, both under the State and Federal due-process-of-law clauses and the mandatory provision prohibiting the enactment of laws impairing the freedom of speech."

In Denver Union v. Truck Lines, 106 Colorado 25, the Court held:

"Aside from the statutory provisions which we have discussed, the legality of peaceful picketing has its basic roots in constitutional guaranties of liberty and freedom of speech. The importance of preventing restrictions of the enjoyment of these constitutional rights has recently again been emphasized in the case of Schneider v. State," and other cases cited in our brief.

"That the duty to prevent these encroachments upon consti-
147 tutional guaranties, even if the opinions expressed and the actions taken by labor organizations differ from our own views, rests not only upon the legislative, but also upon the judicial, branch of the Government cannot be questioned."

And here the Government contends that the guaranty of freedom of speech—or at least I imply that—that is all right, that constitutional guaranty is O. K., and you workers have the guaranty and

protection of it where in controversy with a private employer, but where you are in controversy with the Government, the Government that guarantees that right of freedom of speech and the right to exercise it, it doesn't apply.

In other words, everyone is within the Constitution, is obliged to adopt obedience to it but the Government itself, and I say there are no ifs or ands about that, there is no equivocation, there is no escape from the fact that this decree, as prepared by the Government and submitted to Your Honor will not permit Mr. Lewis to go tonight, as he steps out of this courtroom, and talk to his miners over the radio and say, "It is my opinion the contract has been breached," or, "that we haven't had bargaining in good faith, or have been denied it," and even though those statements were not true, nevertheless the decree denies him that and the Constitution guarantees him that right.

148 Either we have the Constitution to go by, or by the Government's contention, shall I say as I construe it, it has no application to the Government.

The Supreme Court in Washington said this:

"Relators contend that the problem presented in the cases at bar is one of freedom of speech, a right guaranteed by the First Amendment to the Constitution of the United States reading as follows: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'

"Relators argue that peaceful picketing is but a manifestation and a function of the exercise of freedom of speech and can be restrained only upon those grounds and conditions which warrant restraint in any other case involving freedom of speech.

"Peaceful picketing is a manifestation of the exercise of freedom of speech, and it can be restrained only upon those grounds and conditions which warrant restraint in any other case involving the test upon which abridgment of speech may be justified"—if they had this then they would be within their rights in applying for the in-

149 junction—"is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

"The peaceful picketing in the cases at bar is but an exercise of the right of freedom of speech and is not of such a nature as to warrant the restraining orders."

The Court. Speaking of substantive evil, what is the limitation of substantive evil, in your judgment?

Mr. Padway. It has been defined in these very cases I am reading, Your Honor, as a clear and present danger to the lives and property of the individuals affected by the picketing. In other words, right there on the spot:

You will find cases that where the picketing was had at a certain plant, including rioting and the like, that, of course, was restrained. Where the picketing, however, went on a block away, was peaceful, had no tendency to encourage violence or destruction of property, that could be restrained.

The classical illustration given by Justice Holmes as to where freedom of speech commences and where it may stop, or rather the line of demarcation is on this order: Speech is used in connection, let us say, with a person who entered a crowded moving picture show
150 house and cried "Fire."

The COURT. His word was "theatre". I heard him deliver his opinion.

Mr. PADWAY. Did you? It is a good opinion.

The COURT. There weren't any moving picture houses at that time.

Mr. PADWAY. No, but he said one had no right to enter a thickly populated hall or lecture or place of amusement—I think that is what he used, a place of amusement—and holler "Fire"; that would not be an exercise of freedom of speech because of the clear, present, and immediate danger.

The doctrine is well set forth in all these cases.

In Murdock v. Pennsylvania, Justice Jackson stated:

"In my view the First Amendment assures the broadest tolerable exercise of free speech, free press, and free assembly, not merely for religious purposes, but for political, economic, scientific, news, or information ends as well."

The COURT. We will take a five minute recess.

(Thereupon, a short recess was taken.)

Mr. HOPKINS. If it pleases the Court, momentarily I should like to address myself to you, sir, most respectfully, and to Government counsel.

When an exception was noted by the defendant in reference to
151 the extension of the temporary restraining order, Your Honor, I suggested at that moment that the defendants did not feel that they could waive strict compliance. That is not to say, sir, and I now most respectfully say to you that was not intended to say that we do not accept an order from this Court now, or any time, any order that this Court promulgates under similar circumstances. It was merely, sir, to protect the efficacy and the fullness of the exception which I sought to note on appeal. I thought that should be stated to Your Honor, because in the heat of the moment I was saving my point, and that is the reason we do not refuse to accept.

The COURT. You still say you do not accept service?

Mr. HOPKINS. I do accept service of the order extending the temporary restraining order.

The COURT. I thought that was just saying you did not accept.

Mr. HOPKINS. At the moment, sir, I say to you now, sir, we do accept the order extending the temporary restraining order.

The COURT. It won't be necessary to serve it then later?

Mr. SONNETT. If the Court please, would Your Honor inquire as to which defendants the counsel is accepting service for now?
152 Mr. HOPKINS. For all of the defendants before Your Honor.

Mr. SONNETT. If Your Honor please, would Your Honor read the order of this Court to the defendant Lewis, individually and as president of the United Mine Workers, so that he personally is on notice of its exact terms?

Mr. HOPKINS. We except to that request because the defendant is here.

The COURT. I don't see any necessity for that.

Mr. SONNETT. I know of nothing on the record, if the Court please, which indicates the personal acquiescence of the defendant Lewis in the statement just made by his counsel, which contrary to the statement which counsel made a half hour ago.

I do suggest, in the interest of the record, that something be put on the record personally indicating acquiescence of counsel's statement.

The COURT. But Mr. Lewis is here in the courtroom, and his counsel is speaking for him, and counsel says he accepts service, and I think that ends it.

Mr. SONNETT. It does, sir, in the absence of any disavowal by the defendant, and I am quite content to rest on counsel's statement.

The COURT. Very well.

Mr. PADWAY. May it please the Court, there is just one more
153 point that I desire to make in this main argument, and certainly I am grateful to the Court for the time you have indulged us in, and were it not for the importance of it, as I said before, I should not impose upon Your Honor to this extent, but it is so important that this time you are allowing us now I think is time well spent for all of us.

I want to make one further point, and that is this: the order is tantamount to an imposition of involuntary servitude on the 400,000 miners, or more, involved. I say it respectfully; I am talking legally now; I am not indicating that Your Honor is disposed, or had in mind, to make slaves of these miners, but I argue the legal point of view, that an order such as this cannot be construed otherwise than an order imposing involuntary servitude.

First, I have the respectable analysis by Justice Brandeis, in the case that I quoted, in that dissent where he said, in the Bedford case, "If men may be compelled to work by a decree of this nature that reminds of involuntary servitude."

And, as I recall, there were at least two and perhaps three of the justices who joined in that dissension.

Then again we have here this situation—I think it was fundamental in our jurisprudence since this nation was established—that men have the right to work or not to work as they see fit.

154 The COURT. Well, do you think it is necessary to argue that, Mr. Padway?

Mr. PADWAY. Oh, very important in this case—tremendously important; because I think——

The COURT. The Court agrees with you.

Mr. SONNETT. So does the Government, Your Honor.

The COURT. Sir?

Mr. SONNETT. So does the Government.

Mr. PADWAY. All right. I think this case is ended. If that is what the Court wants us to understand is the law, and the Government agrees, namely, that men have the right, or not, to work, and they are not working—what are we here for? Men have ceased working, and don't want to work. What is this case about?

This case is about the empty act, that is all it would be, of Mr. Lewis writing a little order and saying, "My order of such and such a day is hereby cancelled," or "My statement of such and such a day is hereby cancelled." That is what the Government seeks—is it? Will it assuage the grief or satisfy the Government to say, "Well, it made

Mr. Lewis write such and such an order?" If that is the satisfaction it desires to glean from this proceeding, that is another matter.

That is not what the Government is here for, and that is not
155 what the injunction does, as interpreted, if the Court please.

The injunction is that men shall not quit in concert or singly and that the order is asked for the purpose of having Mr. Lewis issue an order which will be interpreted by his people that they must go back to work.

If it is not for the purpose of getting them back to work, to use a common colloquial phrase, what is all the shouting about? If these men are not enjoined from quitting, either singly or in concert, if these men don't have to go to work, then what is all the noise about?

Does counsel for one moment believe that all that needs be done is to press the magic wand, have Mr. Lewis issue an order and tell them to go back, and assuming that is so—it is to get them back by a decree, a mandatory decree.

It restrains them from talking about it or persuading others concerning it; from getting together and deciding to stay out, and mind you, this is not a conspiracy action, this is a straight out-and-out injunctive decree—this restraining order—that the men shall go back to work. It was utilized, if you please, to break this concerted cessation of employment. It was utilized to get them back. If it was not utilized for that purpose, then I don't know what it was utilized for.

The fact of the matter is, in the brief of the Government, the Government forcefully states that this is a strike, and they want—
156 I am not giving the exact language used by counsel, but it is only susceptible of that meaning, and they want it called off and want them back at work, and remember—if the Court pleases—this is not an injunction directed only at Mr. Lewis, it is directed at every mine worker. They are named as defendants, and the language of the injunction is to all and every person.

Mr. SONNETT. That is not true, Your Honor. Counsel is deliberately or otherwise misstating the record.

Mr. PADWAY. Let me read it.

Mr. SONNETT. Defendants in the suit are United Mine Workers of America, an unincorporated association, and John L. Lewis, individually and as president thereof—as Your Honor well knows.

Mr. PADWAY. I don't know what that means, if the Court please; just because the thing is entitled as counsel describes it—I am going to the decree, the description of the United Mine Workers is merely a designation of an organization composed of some 500,000 or 600,000 miners, and then, we go to the decree to see who it shall affect.

It does not affect the United Mine Workers, as United Mine Workers, it affects Mr. Lewis, because he specifically is named; but it affects every member because that is the language of the order, and I will read it, since counsel seems to have some misapprehension of his own order:

"Ordered, That the defendants and each of them and
157 their agents, servants, employees and attorneys, and all persons in active concert or participation with them be and they are hereby restrained——"

Mr. SONNETT. Will counsel complete the reading of the order?

Mr. PADWAY. "—pending further order of this Court, from permitting to continue in effect the notice heretofore given by the defendant John L. Lewis, to the Secretary of the Interior, dated November 15, 1946, and from issuing or otherwise giving publicity to any notice that, or to the effect that the Krug-Lewis agreement has been, is, or will at some future date be terminated, or that said agreement is or shall at some future date be nugatory or void at any time during Government possession of the bituminous coal mines and from breaching any of their obligations under said Krug-Lewis agreement and from coercing"—this is to every and all persons—"and from coercing, instigating, inducing, or encouraging the mine workers at the bituminous coal mines in the Government's possession, or any of them, or any person, to interfere by strike, slow-down, walk-out, cessation of work, or otherwise with the operation of the said mines by continuing in effect the said notice or by issuing any notice of termination of agreement or through any other means or device."

158 Counsel thought that he had it confined only to the issuance of Mr. Lewis' order. There could not be a more comprehensive language than was used in this to not only include the order that Mr. Lewis issued on the 15th, but by any other means or device, as far and as wide and as broad and as high and as deep as the English language can be placed in understandable composition, and from interfering with or obstructing the exercise by the Secretary of the Interior of his functions under Executive Order 9728, and from taking any action which would interfere with this Court's jurisdiction, and so forth.

The last part is not necessary.

Mr. SONNETT. Oh, the last part is very material.

Mr. PADWAY. Then, I will read it.

Mr. SONNETT. Please read it.

Mr. PADWAY. Surely, I will read it, I am very obliging: "from interfering with or obstructing the exercise by the Secretary of the Interior of his function under Executive Order 9728."

Now, there was a semicolon before the word "and." It isn't tied up with anything. It is an inhibition, by itself; and "from taking any action which would interfere with this court's jurisdiction or which would impair, obstruct, or render fruitless the determination

159 of this cause by the Court."

Now, Mr. Sonnett may take it upon himself to explain what that means.

To me, as Your Honor presented it a few moments ago, before the recess, it means exactly what it says—namely, every person, all agents, all attorneys, all persons connected with the enterprise, the members of the organization, are all enjoined from inducing, encouraging, or proceeding to do anything which will bring about the cessation of work and striking.

And, in the brief, if the Court please, here is the argument counsel makes: It was way in the early morning hours of this morning that I read that, I may not have absorbed it too well, but as I remember it, it did this—counsel made this statement—that Lewis knew, when he sent that letter, based upon the established policy of the United Mine Workers, "No contract, no work," that there would be a cessation of work, and consequently the mines would be shut down.

Then, an injunction is asked. What did it ask for, then? To maintain that particular status quo? To keep in force a cessation of work? Or, to ask the aid of this Court to revert that cessation of work and to have the men go back, on strike?

160 The COURT. No; to maintain the status quo until the injunctive process, the validity of it, could be determined. That was the purpose of the order.

Mr. PADWAY. Well, the status quo is, if the Court please——

The COURT. The status quo——

Mr. PADWAY (interposing). Your Honor's order was issued at what date—November 18.

The COURT. The status quo would have required Mr. Lewis to notify the miners that the contract was not terminated.

Mr. PADWAY. Well now——

The COURT. That would have maintained the status quo until we could have had this case tried.

Mr. PADWAY. That is exactly why the argument that I desired to make, and have stressed it on the basis of involuntary servitude.

What is involuntary servitude, if the Court please? It is very simple. Involuntary servitude is compelling men to work against their will.

The COURT. The Court does not mean that, sir.

Mr. PADWAY. Well, I respectfully desire to make that argument, because it isn't my argument; it is the argument of the United States Supreme Court and other courts.

The COURT. I don't see that, either.

161 Mr. PADWAY. Let's see if I am misleading the Court, or I can go ahead.

The COURT. I don't think you are misleading the Court. I am going to hear what you have to say, Mr. Padway.

Mr. PADWAY. I would like for you to do that, because I think there is, in all seriousness, much merit to that argument.

My concept of involuntary servitude is—compelling men, under the pain and penalty of punishment, to work against their will, assuming of course the work is not being performed as punishment for crime. That, of course, I assume we are not going to take into consideration, because none of these men are refusing to work or have been ordered to work, by Your Honor, because of a punishment for crime.

Now then, is this working against their will—it matters not whether you call it an injunctive decree or an obedience to the Smith-Connally Act or whatever it may be. It is apparent that these men, combined together, as a union, for their protection, for their aid and support, and their desire to attain wages, hours, and working conditions, and improved wages, hours, and working conditions, decided that if they disagree or cannot get what they want, they will cease work.

The Government concedes that, by the very request for an
162 injunction in this particular case. It says Mr. Lewis knew, when this order was issued, that they would cease work.

Now, the Government does not want the work to cease, and the Government has secured a decree.

The COURT. All the restraining order was, as a practical matter, was an order on Mr. Lewis, which is not by indirection, to order these men not to cease work until the merits of the controversy could be

determined, and of course the Court respects counsel and respects what you have to say; but, essentially, that is all the Court's order meant; and we think Mr. Lewis knew it; that is, I think he knew it—I suppose he knew it.

Mr. PADWAY. Now, if the Court please, I, speaking for myself, and my associates—we discussed this briefly, but among themselves they discussed it at length before I returned—certainly, in good faith, came to the conclusion that what this injunction meant was to have Mr. Lewis order these men back to work, in other words, to replace, or command them to remain at work.

Put it this way—command them to remain at work, even though Mr. Lewis, his Executive Board, the officers of the organization, and hundreds of thousands of these men desired not to.

Now, that is about the situation. If that isn't it, the interpre-
163 tation given to that particular order, then the men can remain out of work without any fear of punishment for contempt.

Now, I say that we must call a spade a spade.

The COURT. Yes, and you must review this thing in a practical manner, too.

Mr. PADWAY. That is right, that is right. I am glad Your Honor said that, because that was a phrase I was about to use, probably not "as a practical matter," but view it in its actual light. Its actual light is to get Mr. Lewis to do something which his members and he do not want to do, and the thing you want to get them to do is—abstain from refusing to work. That is a practical solution the Government seeks, and that is what the order commands.

The COURT. No; the order of the Court wasn't anything the Government did, it was the Court's order, the order of the Court—the practical effect of it—was seeking to maintain the status quo until the Court was able to determine the merits of the controversy between the United Mine Workers of America and the United States. That is all it was.

Mr. PADWAY. Now, if the Court please, and really—and whatever I do say, whatever I say is—and I cannot help putting it bluntly—Your Honor's order tells these men that they cannot strike—period.
164 And, tells them that if they go on strike, in the light of that order, that they will subject themselves to punishment.

The COURT. The Court didn't so understand the order.

Mr. PADWAY. I am very glad to hear Your Honor say that——

The COURT (interposing). And the Court signed the order.

Mr. PADWAY (continuing). Very glad to hear Your Honor say that, because it certainly is going to be a material aid to us.

The COURT. The Court does not think there is any real basis for misunderstanding of the order. The Court listened and will continue to listen, because it is important; but the Court thinks it is perfectly evident that the only possible purpose of that order was to maintain the status quo until it could be determined whether or not this agreement with the Government continued during the entire time that the Government had control of the coal mines; or, whether it could be terminated by the Unions in thirty days. Now, the maintaining of the status quo for eight or ten days could not have possibly, in the Court's opinion, injured the Union in any way. That is one thing the Court had in mind before the Court signed the order.

165 If the order had been obeyed, and the status quo had been maintained we could have come in Court and discussed this matter in a formal way, and determined the merits of the controversy without this very unfortunate situation.

Now, that is all there is to this case, sir, insofar as the meaning of the restraining order is concerned. That is absolutely all there is to it, and you can argue here for days and weeks, but at the same time that is all it meant as a practical proposition, and the Union saw fit not to allow the matter to remain in status quo until it could be determined judicially.

Mr. PADWAY. I will have to put it this way, if the Court please, whether it redounds to our advantage or disadvantage—I will have to say this: that maintaining the status quo was subjecting these members to involuntary servitude. I am quite mindful of how important that statement is, but let me add to that, this, if the Court please, that particular philosophy was presented to Congress, the maintenance of the status quo in the so-called legislation, including these cooling-off periods of thirty days or sixty days, less or more, in various spells. The intention may be well founded, but I say to Your Honor where a man is deprived of the right under a status quo order for ten days, ten hours, or ten minutes, if you please, that is involuntary servitude, just as much——

166 The COURT (interposing). Mr. Padway, I am sure you know that a court of equity has no power to direct an individual either to work or not to work. There isn't any question about that, and there could not be any misunderstanding about the scope of this order. There could not have been any misunderstanding about it.

The Court does not want to make a statement that is offensive, and the Court thinks that you have argued very eloquently and very interestingly, but the Court still says that all there was in this case, in the world, insofar as the restraining order was concerned, was to order Mr. Lewis to maintain the status quo and the Union the status quo until there could be a judicial determination of a matter which is very serious to all of the people of the United States, as well as to this Union; and nothing that you could say would change my mind about that, because I understand perfectly well what I had in mind, and I knew exactly what I was doing when I did it.

Mr. PADWAY. Well, again, there is no disagreement with that. The disagreement between Your Honor and myself, if it may be called that, is this: that the maintenance of a status quo is an imposition of involuntary servitude.

Now, I don't say that Your Honor may have intended that. I don't say that is what Your Honor had in mind, but that is what it

167 amounts to. What else can it amount to? Here are men who are placing confidence and reliance in their officers. It was the 15th of November that Mr. Lewis issued the order. It was the 18th that Your Honor issued the decree. The order had gone out already for the men to quit, and the Court stepped in and says, "Wait, Mr. Lewis; you withdraw that so these men do not quit."

I don't know just what it can spell; maybe that wasn't intended. I certainly believe Your Honor has a right, and Government has a right to determine if that would be the best course to pursue, but whether it was a lawful course or otherwise is a different matter, and I

say that when the order said to them on the 18th and said to Mr. Lewis, "Withdraw that order so that these men do not quit, and do nothing else to help them quit," not only to withdraw the order, but through any other manner or device, but even to encourage them to quit is prohibited by this order.

I say, if the Court please, that the ten days may appear insignificant with respect to the question, but it was certainly significant to the miners, and I say that the restriction was as much a restriction on the exercise of the right to work or the right not to work as it would be, if the Court please, as if a newspaper was told, "For one issue
168 or one day you are prohibited from publishing that press."

Would the Court for a moment in the event of the publication of a newspaper which was involved, for one moment listen to a request that it be enjoined because only one issue of a newspaper were involved? That would as much interfere with the freedom of the press as though the press were shut down for a month or two months, and I say that the command to withdraw an order and tell al the members, agents, and attorneys, and everyone else, after the order had been issued on the 15th it was as much a command to "stay on your jobs" as anything else could be; perhaps I am wrong. I am interpreting that, if the Court please, as involuntary servitude, because here in the cases that we have we find a principle announced. When we discuss the question of involuntary servitude we do not merely think in terms of the condition of slavery or slaves prior to the Civil War.

Here is the case of Bailey v. Alabama, in which the Court condemned a statute with respect to nonfullfilment of a contract for personal services.

"The plain intention was to abolish slavery of whatever name and form and all of its badges and incidents; to render impossible any state of bondage, to make labor free by prohibiting that control by which the personal service of one man is disposed of or coerced for
169 another's benefit, which is the essence of involuntary servitude."

In Stapleton v. Mitchell, 60 Fed. Supplement 61, Justice Murrah, writing for the majority in an opinion which nullified a candid antistrike statute, said:

"The right to peaceably strike or to participate in one, to work, or to refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the State may not condition or abridge in the absence of grave and immediate danger to the community. But by Section 8 (3) (12) (13) the State of Kansas has not only conditioned these rights, but expressly prohibited them and made their exercise a criminal offense. In this setting we think it is the inherent prohibitions of the statute standing alone which impose the unconstitutional restraint, and goes against whom the statute is plainly directed should not be required to abide the processes of criminal justice in order to obtain the redress to which they are entitled under the Federal Constitution."

In Carpenters' Union v. Citizens Committee it is said:

"* * * Every man has a right to full freedom in the dis-
170 posal of his labor, according to his will, and workmen have a right to organize for the purpose of promoting their common

welfare by lawful means. They may impose any condition of their employment which they may regard as beneficial to them, and, if not bound by contract, may abandon their employment at any time, either singly or in a body, with or without cause."

I want to explain what is meant by "bound by contract." They may quit, even if they are under contract, but in so doing subject themselves to damages that may flow from a breach of contract if approved.

In Alabama State Federation of Labor v. McAdory, a case which it was my privilege to have tried and argued, the Court said this:

"And we think it is well settled that the members of a labor organization—that is, workmen who are not bound by contracts for a definite period and have not, by agreement freely made, given up such rights—may, without liability, abandon their employment at any time, either singly or in a body, as a means of compelling or attempting to compel, their employers to accede to demands for better terms and conditions. * * *

"* * * We are persuaded, also, that that part of Section 13 of the Act, making it unlawful to strike except when it is
171 authorized by the vote of the majority of the regular employees working in the business, plant, or in such unit thereof, expressed by a secret ballot, cannot be sustained. As we have previously noted, each individual employee has a right to strike for a legally justifiable purpose, and such a right, of course, rests upon a minority as well as upon a majority * * *."

In the light of the injunction issued in this case could any group of miners meet in any hall, or any other public place where they desired to meet, and take a vote, or discuss the question of quitting their employment, and quitting as the result of that, and then not subject themselves to a violation of that injunction?

As I read it, they could not do that. They would be, then, because every person—all and every person is enjoined—all and every person is enjoined from doing that very thing. That would be not only encouragement, but it would be immediate action.

Now, then, here is the Henderson case, here is a Florida case where an injunction was issued against persons from striking or interfering with a cessation of work, and the Court said:

"We are not advised of any rule of law under which any man in this country will be forced to serve with his labor any other
172 man whom he does not wish to serve.

"Section 19 of the Bill of Rights of our Constitution provides:

"'Neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party has been duly convicted, shall ever be allowed in this State.'

"If the injunctive order be construed to mean that the officers and members of the Longshoremen's Association, Local No. 1416, were thereby required to load or unload the trucks of 'Collins', although there was no contractual relation between the local and Collins, then such construction would violate the constitutional privilege provision above referred to. We think it will not be contended that any member of the local could be committed to jail for refusing to load or unload the 'Collins' trucks. That service requires the performance of manual labor, and it is beyond the power of Courts to punish one by imprisonment for failure to engage in involuntary servitude."

We have a host of cases here, if the Court please, that holds that a man's right to work or not to work is a constitutionally guaranteed right.

173 Now, then, as I read the decree again, again I say that it commanded these persons, individually—it does not only command Lewis to do a certain thing, it commands them to refrain from doing certain things. I do not want to be misunderstood. The miners have as much respect for Government as any one representing the Government. The miners have as much respect for the Courts as any other citizen of the land. The miners do not want to violate decrees, but the miners also want the same constitutional privileges and rights as are accorded every other citizen with respect to freedom of speech, with respect to freedom of assemblage, with respect to freedom of the press, and with respect to being freed from involuntary servitude.

It may be true, if the Court please, that some men in connection with this injunction may have to be punished, fined, or sent to jail. Those are incidents that have happened from time immemorial when men, in John Milton's time, propagandized for freedom of the press and freedom of action, men have always set themselves up, and on the one hand there may be the question of having to go to prison, and on the other the right for the preservation of constitutional rights.

Now, then, we do not by any means intend disrespect to this Court. We do not want to defy this Court, and in saying what I say I make no threat, and I intend no disrespect, but the miners must, as

174 well as every worker must, stand upon his right to work or not to work, when he sees fit; and not to work in furtherance of grievances; and, if compelled to do so, I say, is subjected to involuntary servitude and they must stand upon their rights, regardless of the consequence.

If the Government is desirous of making men work against their will there is a method of testing that issue in the land. If the Government wants to test it out let them submit to the people of the United Sates the issue of whether or not men—whether or not legislation should be enacted, and I think there would have to be a constitutional provision to deprive them of the right to exercise their judgment in the matter of quitting work.

The COURT. Mr. Padway, the Court is not going to stop you, but the Court thinks that almost your entire argument is beside the point, sir.

Mr. PADWAY. Well, my answer to that is, not always, but sometimes.

The COURT. As the Court said before, the practical situation was simply to maintain the status quo until the matter could be adjudicated in the proper legal manner.

Mr. PADWAY. My contention——

The COURT (interposing). There was——

175 Mr. PADWAY (continuing). Is that the sort of order that was issued in this case——

The COURT (interposing). There was no order, either directly or indirectly, and nobody could construe anything the Court has said as an order to the individual miner that he could not work or could work.

Mr. PADWAY. Let us go a little further, to the group of miners, that they could work or not work——

The Court (interposing). There wasn't any order to them that they could not quit——

Mr. Padway. Well, then, I cannot see that there is anything left to this case.

The Court. The bill of complaint states, and it has not been contradicted, that by long practice when the president of the United Mine Workers publicly announced that no contract exists, the miners stopped working.

Now, the question was whether a contract existed or did not exist. The Government claimed that the contract was in existence; the miners stated that it was not in existence; and the Court's order was that the notice should be rescinded, or what amounted to the notice should be rescinded, so that the matter could remain in status quo until there should be a judicial determination as to whether or not the contract existed.

Now, that is all there is in the case insofar as the restraining order is concerned.

Mr. Padway. Well, if that is all there is in the case I can assume for the moment that what the miners did with respect to quitting work was lawful and proper.

The Court. Well, the miners are not in this case, sir.

Mr. Padway. They are by the injunctive decree.

The Court. The Court does not agree with you.

Mr. Padway. Well, is Mr. Lewis then alone in this case?

The Court. No; the United Mine Workers, an unincorporated institution, whatever that may be, is in it.

Mr. Padway. They must act through individuals, if the Court please.

An unincorporated organization is composed wholly of individuals, and whatever is enjoined on Mr. Lewis to do, each miner is enjoined upon to do.

Now, if the order does not mean what I say it means, then I can only say to this Court in conclusion that we have violated nothing and there is no basis for the contempt, the proceeding should be dismissed and we should go forth free from these proceedings.

The Court. Now, is there anything further that the defendants desire to say concerning their motion?

Mr. Higgins. This should be said to Your Honor. The points that Mr. Padway has discussed are primarily incorporated in what would be known as Points 1 and 5 of the Motion to Vacate.

There is also in that motion Points No. 2, 3, and 4 that we respectfully submit to the Court are good, are worthy, and will stand up upon examination, but in light of the length of the argument here and the Court's indulgence, we should like, sir, to rely upon our brief in support of Points 2, 3, and 4 without oral argument at this time; except to say to Your Honor that if in the event the Government raises points to which rebuttal should be addressed, we would respectfully ask the right of rebuttal including those points.

The Court. You have that privilege, of course.

Now, Gentlemen, the Court thinks that we should adjourn at this time until Friday morning at 10 o'clock, at which time the Court will hear the Government on this motion to vacate the order.

Mr. Sackett. The Government, of course, Your Honor, will be entirely agreeable to whatever the Court's convenience is; however,

it would seem to us in the public interest, in light of numerous misstatements, unintentional, I will concede, or assume, that it would be in the public interest for the Government to have an opportunity to state its position briefly.

In so doing, I think I can state our position in less than a half hour and I think it would be helpful if that could be done.

On the other hand, if Your Honor thinks otherwise, we are perfectly content with Your Honor's decision.

The COURT. Well, do you mean that that is all the argument that you want to make?

Mr. SONNETT. At this time, sir; yes.

The COURT. You will want to make further argument on Friday morning, as I understand it?

Mr. SONNETT. I would hope that Your Honor would set the matter down for the reception of the Government's evidence on Friday
179 morning to prove the factual issues raised by the motion of the defendants; various factual issues which they have suggested, and we are prepared and will be prepared to present that proof.

We have had our witnesses appear all day today, and they are still here, but we can produce them.

If Your Honor desires the Government to proceed, we can do that.

The COURT. I have no objection to your making your argument now. I think that to make your argument on Friday morning when everybody has been refreshed, would be better practice, but I will hear you if you insist upon it.

Mr. SONNETT. Well, I will undertake, Your Honor, to finish very briefly, because I do not think at this time that any extended discussion of the Government's position is necessary. I do think that some discussion of it would be advisable.

If I may have the Court's permission, I would proceed with the hope of doing so very briefly.

The COURT. All right, sir, proceed.

Argument on behalf of the United States

Mr. SONNETT. The United States, if the Court please, by its Attorney General, filed a complaint in this Court under the Federal Declaratory Judgment Act, a statute which, as Your Honor
180 knows, was passed in 1934 and which provided that in cases of controversy between parties a suit could be filed to ask the aid of a court for the determination of a disputed legal question.

In accordance with the provisions of that statute, the United States filed its complaint in this Court and named in the complaint and in the summons which was issued by this Court, two defendants. One was the United Mine Workers of America, an unincorporated association; the second was John L. Lewis individually and as president of that association.

The United Mine Workers being an unincorporated association——

The COURT. How do you differentiate—at this point, how do you differentiate the United Mine Workers of America, an unincorporated institution, and John L. Lewis, president of the United Mine Workers? What is the distinction between those?

Mr. SONNETT. I believe that the law is well settled in this District, if the Court please, that an unincorporated association is suable and may sue similarly to a corporation.

The COURT. Yes.

Mr. SONNETT. And our complaint and our summons named the unincorporated association and our complaint so alleges, intending to and, in fact, and, in law, suing the organization and its president and suing its president, also, as an individual because he has participated in the acts which gave rise to the controversy which the Government——

181

The COURT. For the Court's information, how do you distinguish between suing the unincorporated institution and suing the president as president of the unincorporated institution?

It seems to me it is the same thing.

Mr. SONNETT. Substantially so, Your Honor, except that the United Mine Workers of America, perhaps, could have acted initially when they made the Krug-Lewis contract through a vice president.

The COURT. Could what?

Mr. SONNETT. They could have acted, perhaps, through a vice president; that is, the union.

But the fact is, as our complaint shows, the contract between Krug and Lewis was signed by Krug for the United States on the one hand and by the defendant Lewis as president of the United Mine Workers for it on the other hand.

Accordingly, he was named both as president of the union and as an individual.

The COURT. Now, is it the Government's contention that if this restraining order should be upheld, that there would be a verdict against Lewis as president of the United Mine Workers, an unincorporated institution, and also against United Mine Workers?

182

Mr. SONNETT. It would be my view, Your Honor, without having given it any extended——

The COURT. It is a matter of some importance.

Mr. SONNETT. Yes, it is, sir. But I would regard it in this posture; that the verdict would determine whether John L. Lewis individually and whether John L. Lewis as president of the United Mine Workers and whether the United Mine Workers of America, the organization, through John L. Lewis, have committed contempt of the Court.

The COURT. Well, you have not answered me, but that is all right. Go ahead.

We are just where we started, but go ahead.

Mr. SONNETT. The United States sought, if the Court please, under the provisions of the Federal Declaratory Judgment Act to obtain a declaration by a court of the United States and a determination of a disputed legal controversy which existed between the union on the one hand and the Government of the United States on the other. The case is not in any real sense a labor dispute. The problem which was placed before this Court in our complaint was that we have the aid a court to determine what the legal construction—the proper legal construction—of the Krug-Lewis Agreement was.

For that purpose we came into court.

We alleged in the complaint—and I don't think it is seriously disputed—that after the Secretary of the Interior, pursuant to Executive Order, which I would like to refer to briefly, as I have a certified copy here—after the Secretary of the Inferior took possession of the mines at the direction of the President, he did certain things. I will come to those in a moment.

But may I refer at this time to the findings by the President upon which he directed, pursuant to law, that these mines be seized.

He said:

"Whereas, after investigation, I find and proclaim that there are interruptions or threatened interruptions in the operation of the mines producing bituminous coal as a result of existing or threatened strikes and other labor disturbances"——

That much has been read already, if the Court please. But he went on to say:

"That the coal produced by such mines is required for the war effort and is indispensable for the continued operation of the national economy during the transition from war to peace that the war effort will be unduly impeded or delayed by such interruptions, and that the exercise hereinafter specified of the powers vested in me, is necessary to insure the operations of such mines in the interest of the war effort and to preserve the national economic structure in the present emergency.

"Now, therefore, under the powers vested in me, by the Constitution and laws of the United States, including the Selective Training and Service Act, and as President of the United States and as Commander-in-Chief of the Army and Navy of the United States, it is hereby ordered:" He orders first:

"That the Secretary of the Interior take possession of all the mines"—

And whatever property there was necessary and incidental to the operation of the mines.

He directed, second, that the Secretary of the Interior "shall operate the mines in accordance with such terms and conditions of employment as are in effect at the time possession thereof is taken, subject to the provisions of Section 5 of the War Labor Disputes Act."

I will come back to that, if I may, in a moment, Your Honor.

The President further directed that subject to the National Wage and Price Stabilization policies, the Secretary of the Interior was authorized pursuant to the provisions of Section 5 of the War Labor Disputes Act following such negotiations as he may deem necessary with the duly constituted representatives of the employees to apply to the National Wage Stabilization Board for appropriate changes in the terms and conditions of employment for the period of the operation of the mines by the Government.

The order directed also that in carrying out the provisions of the order the Secretary of the Interior might call upon public or private instrumentalities that he should make employment available and provide protection to all employees working in such mines, and to all persons seeking employment as far as they may be needed.

He went on further to say that the Secretary of Interior shall permit the managements of the mines taken under the provisions of this order to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.

It went on further to provide that the Secretary of the Interior was authorized and directed to maintain customary working conditions in the mines and customary procedure for the adjustment of workers' grievances.

It was provided expressly that he, the Secretary of the Interior, "shall recognize the right of the workers to continue their membership in any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted
186 activities for the purpose of collective bargaining or other mutual aid or protection; provided, that such concerted activities do not interfere with the operation of the mines."

That was the Executive Order pursuant to which the mines were taken, and they were taken for what seems to me obviously was a Governmental sovereign function; it was the safety and continued existence of the country, as the President expressly found as a reason for taking the mines in the first place.

After the mines were taken, as our complaint alleges which we filed in this Court, negotiations were had between the Secretary of Interior and the defendant John L. Lewis representing the Mine Workers, and an agreement was made, and that agreement has become known as the Krug-Lewis Agreement.

Now, I realize, Your Honor, that at this time the merits of the basic question which the Government brought to this Court, namely, the construction of the contract, is not presently before Your Honor for decision, but a good deal of talk has been had about it all day and I merely want to say one thing: the Government proposes to prove that shortly after the Krug-Lewis Agreement was signed, the defendant John L. Lewis left the White House with the Secretary of the Interior Krug, and he said before the Fox Movietone cam-
187 eras, the transcripts of which we have, "The contract has just been executed in the White House governing the national bituminous coal industry. It settled for the period of Governmental operation of the mines all the questions at issue. Instructions are being given the men in the field to return to work immediately."

And then Secretary of the Interior Krug said, "I believe Mr. Lewis will agree with me that it is a contract that is fair to the operators and to the men. It is too bad we did not have it two months ago"; that is, when the work stoppage initially commenced before Government seizure.

There are many other circumstances, if the Court please, which the Government will offer to this Court when the question, the ultimate legal question, is before the Court, but that is why we came into the Court relying on a statute which says that anybody has a right to come into the Federal Court to get the determination of a disputed legal question.

There was a dispute, as our complaint alleges. The defendants asserted on the one hand that they had the right to terminate. The Government said on the other hand, "You don't have the right to terminate."

The Attorney General ruled that they didn't have the right to terminate.

Despite that, a notice of termination was given.

188 The complaint alleges that the mere declaration by the defendant Lewis that there was no contract—and we will prove

beyond a doubt this fact, Your Honor—the mere declaration by the defendant Lewis that there was no contract whether or not he was right or wrong as a master of law, the men would walk out of the mines and that that would cause injury to the people of the United States.

So we sought the aid of a court of equity to hold the matter in abeyance temporarily so that this Court might have a chance to exercise its judicial power so that the Government and the union might have a chance to have the ultimate legal question settled in an American way, by an American court, in open court.

The injunctive relief about which counsel has made so much controversy today was intended only as an aid to the effective exercise of this Court's jurisdiction. It was temporary only. It was not aimed at the miners in any construction or alleged construction that it was false. It was carefully aimed at the defendants in this case, and anybody who might assist them to destroy the status quo, until the Court could pass upon the subject.

Now, I think there has been a concerted attempt, Your Honor, to confuse the minds of some people on that subject, and I think that the misunderstanding and confusion that has existed in some minds about the exact nature of these proceedings, I hope has been
189 cleared up somewhat today and will be further clarified.

The papers are not difficult to understand. Counsel cannot sincerely have the difficulty in interpretation which he professes to have. They are in simple English language.

And let me make it explicit, Your Honor. The Government was interested, as Your Honor well knows and set forth in his order, merely in mainfaining the status quo; that is, to prevent this verbal act, this assertion that there was no contract which would drive and did drive the miners out of the mines.

190 Now, there is a good deal of talk here today about the legal issues involved.

I merely want to indicate our position on three legal issues, Your Honor; because I think, despite all the oratory and eloquence, that on each of those three legal issues, the Government has a solid foundation of decisions of the Supreme Court of the United States squarely in point.

Let me come to the first. Our first contention is that whether or not the Norris-LaGuardia Act applies to the proceeding, the papers charge a contempt of court, the defendants have committed a contempt of court; they are committing a contempt of court, and they will continue unless restrained to commit a contempt of court.

The case directly in point which counsel has not even undertaken, Your Honor, to distinguish—because it cannot be distinguished—is United States against Shipp, in 203 U. S.

I know that Your Honor is familiar with that case, but let me just read briefly one sentence from it.

The Supreme Court by Mr. Justice Holmes, who was certainly an ardent judicial guardian of civil liberties—the Supreme Court speaking through that great judge, said:

"If this Court had no jurisdiction of the appeal, this Court and this Court alone could decide that such was the law. It and it alone
191 necessarily had jurisdiction to decide whether the case was

properly before it. On that question, at least, it was its duty to permit argument and to take the time required for such consideration as it might need. Until its judgment declining jurisdiction should be announced, it had authority from the necessity of the case to make orders to preserve the existing conditions and the subject of the petition."

The power involved, if the Court please, which counsel seems to have disregarded all day long, is the power under our Constitution given to our Courts to determine controversies, and that power was the power which the Government sought here to invoke. It is nothing novel. There are no sinister implications in it. That is what the Courts are for. That is why we came to court.

We invoked the judicial power given to the courts of the United States by the Constitution, and it is that power which the defendants have violated. It is that power of which they are in contempt, whether or not the Norris-LaGuardia Act applies.

To hold otherwise would be to deny to the courts the opportunity to function in the interests of justice.

The COURT. The Court has stated repeatedly today that the Court agrees with that.

192 Mr. SONNETT. I come to the second point, if the Court please, and that is whether or not the Norris-LaGuardia Act applies.

On that, may I indicate briefly, because we have filed a brief on the subject, that the statements of counsel concerning the application of the Act disregard its factual background, its language, and its legislative history.

Let me touch, for a moment, on its legislative history.

The Senate Committee on the Judiciary, commenting on the definition of terms used in the Act, stated that the Norris-LaGuardia Act was directed against the intolerable practices of employers in coercing their employees.

And, let it be understood, if the Court please, we are not here defending any such practices in the past, in the present, or in the future. That is not the problem, because we don't here have a labor dispute.

The Senate Committee said:

"The main purpose of these definitions is to provide for limiting the injunctive powers of the Federal Courts only in the special type of cases commonly called labor disputes, in which these powers have been notoriously extended beyond the mere exercise of civil authority, and wherein the courts have been converted into policing agencies devoted in the guise of conserving peace, for the purpose of aiding employers to coerce employees into accepting terms and condi-

193 tions of employment desired by employers. The proposed bill is designed primarily as a practical means of remedying existing evils, and limitations are imposed upon the courts in that class of cases wherein these evils have grown up and become intolerable."

Representative Kerschner, who was a member of the House Committee which reported the bill, said:

"Be it remembered that this bill does not attempt to legislate concerning Government employees. I do not believe that the enactment of this bill into law will take away from the Federal Government any rights which it has under existing law to seek and obtain injunctive relief where the same is necessary for the functioning of the Government."

Representative LaGuardia said:

"I do not see how in any possible way the United States can be brought in under the provisions of the bill."

Representative Kerschner further stated:

"This deals with labor disputes between individuals; not where the Government is involved. It is my notion that under this bill the Government can function with an injunction if that is necessary in order to carry out the purposes of the Government."

194 Certainly this much is clear: At the worst—at the worst—the question of the application of the Norris-LaGuardia Act to this case is doubtful. The Government does not think there is any question about it on the basis of the factual background of the Act, on the basis of its language, or on the basis of its legislative history.

But that, as Your Honor well knows, is what Courts are for.

But what happened when the restraining order was served? Nothing. The defendants did not advise the Government of any intention to comply or disregard; and incidentally, the order was issued, Your Honor will recall, before the effective date, of the so-called Lewis termination notice.

What happened? Did they come into court affirmatively to vacate it and to put that question before this court for decision?

No.

For the first time, so far as I am aware in this case, when they have come into the court affirmatively is today, and that is when they have this motion filed which is before the Court for consideration along with the motion for temporary injunction by the Government and for punishing these defendants for contempt.

I come now, Your Honor, to the last of the Government's three major legal points, suggested by the argument of counsel for the defendants.

195 Counsel for the defendants spent a great deal of time in trying to demonstrate that there was here some denial of constitutional rights. I am content, Your Honor, for the Government, to rest our position on the statements again of that great judicial guardian of civil liberties, Mr. Justice Holmes, in the case that counsel started to refer to but didn't finish.

I would like to quote what Mr. Justice Holmes said, and it is directly applicable here because there isn't any question of free speech involved here.

He said in the Schenck case, and I quote:

"We admit that in many places and in ordinary times the defendants in saying all that was said in the circular would have been within their constitutional rights, but the character of every act depends on the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting "fire" in a theater and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force."

And Mr. Justice Holmes cited Gompers against Buck Stove & Range Company, a case, Your Honor, where an injunction was issued—

196 in a labor dispute, not a case like this—in a labor dispute where an injunction was issued to prevent the utterance of words which would have the effect of force.

And Mr. Justice Holmes, who certainly has been admired and revered by the bench and bar for his attitude on civil liberties, said—with approval—and citing that case:

"It does not even protect a man"—that is, his constitutional right of free speech—"from an injunction against uttering words that may have all the effect of force."

The Government is prepared to prove, Your Honor, that the words here in the notice of termination issued or alleged termination issued by the defendant Lewis had all the effect of force.

The plaintiff has that proof and will produce that proof.

There is no question about it whatsoever.

I submit there is no question whatsoever of freedom of speech involved. Whatever counsel has said on it I will say charitably is because of a misunderstanding of the issue, but on the basis of Mr. Justice Holmes and the Supreme Court, it is clear that there is no such issue.

We request Your Honor that the motion for a temporary injunction and the proceeding to punish these defendants for contempt be set down for trial before this Court on Friday morning. We will be ready at that time to prove before Your Honor by witnesses in open
197 court in the American way everything that I have asserted.

We need not rest and the Court need not rest upon my statements. Issues of fact have sought to be raised; we will resolve them.

Accordingly we request——

The COURT. Well, don't you think if a jury is to be used in the case, that it is necessary for the Court to pass upon whether or not the Norris-LaGuardia Act is involved here before the jury is empaneled?

Mr. SONNETT. Well, if the Court please, if Your Honor would desire an expresison of the Government's views——

The COURT. My own view about it is this—my own view about it is this; If the Norris-LaGuardia Act is involved, a jury will have to be empaneled unless it is waived by the defendants.

My view also is that if the Norris-LaGuardia Act is not involved, that the calling of an advisory jury is simply almost nonsense, because ninety-nine and forty-four one-hundredths percent of this issue are legal questions and not questions of fact, and to have a jury in here and have to send them out every five minutes while we discuss the legal questions, it seems to me would interfere seriously with the proper consideration of this case.

Now, if the case is a Norris-LaGuardia case, we have got to have a jury unless the defendants waive it.

198 Mr. SONNETT. If Your Honor please, whatever Your Honor's decision on that point is entirely satisfactory to the Government. We do not press the use of a jury. Our thought was that if the defendants wanted one, they could have one, because it is not our intention to deny them any single possible right in the determination of this matter.

We have tried to be, and I think we have been——

The COURT. Now, I want to ask you again, isn't it necessary for the Court to determine whether or not the Norris-LaGuardia Act is in this case before we can proceed with the trial?

Mr. SONNETT. I think such a determination, Your Honor, would be entirely appropriate and would simplify the future proceedings.

So I would request that Your Honor make such a determination at this time or prior, I should say, to the date set for hearing.

The COURT. Prior to the what?

Mr. SONNETT. Prior to whatever date Your Honor sets for hearing.

Obviously, whatever date Your Honor sets for hearing on the temporary injunction and the contempt proceedings will have to be far enough away to give Your Honor time to give such further
199 consideration to the question as Your Honor desires.

The COURT. Well, it seems to me that what we should do on Friday morning is to take such further proceedings as counsel on both sides think are necessary in order to determine whether the Norris-La-Guardia Act applies, and after that is done, the Court should determine whether or not it does apply.

If it does apply, a jury will have to be called unless it is waived. If it does not apply, the Court thinks a jury is just nonsense in this case. That is what the Court thinks about it.

Almost the whole case is a matter of law.

Mr. SONNETT. The Government is entirely agreeable to that, Your Honor.

The COURT. All right, gentlemen, that will be the Court's procedure. We will adjourn at this time until Friday morning at ten o'clock.

(Whereupon, at 4:40 o'clock p. m., an adjournment was taken until Friday, November 29, 1946, at 10 o'clock a. m.)

Reporter's certificate

I, Orlo H. Frost, one of the official reporters for the District Court of the United States for the District of Columbia, do hereby
200 certify that the foregoing is a true and correct transcript of the proceedings had in the above-entitled action on Wednesday, November 27, 1946.

O. H. FROST,
Official Reporter.

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201 In the District Court of the United States

For the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *November 29, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10 o'clock, a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney

General; JOSEPH M. FRIEDMAN, Special Assistant to the Attor-
202 ney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

203 PROCEEDINGS

The COURT. Gentlemen, On Wednesday the defendants did not argue their points No. 2, 3, and 4 on the motion to discharge and vacate the rule to show cause.

Now, the Court would like to hear the defendants on those three objections.

Mr. HOPKINS. The Court would like to hear the defendants on those?

The COURT. Yes, sir.

Mr. HOPKINS. Very well, Your Honor, but prior to that time, with Your Honor's indulgence, the defendants would like to file their answer to the motion for a preliminary injunction which has not yet been filed, and I would like to pass one to the clerk and one to the Government counsel.

If the Court will indulge us just a few moments, there were some questions as to whether or not we had present with us this morning the authorities, that is, the actual volumes upon which the argument would be predicated.

The COURT. The Supreme Court cases and the Federal Reporter cases you can get from my chambers if you wish.

Mr. HOPKINS. Thank you, sir. That was one of the points that was bothering us at the moment.

Mr. PADWAY. Are they in your chambers, Your Honor?

The COURT. Yes, sir.

204 Mr. PADWAY. Would you have any objection to counsel going in there while another counsel proceeds with argument, and another counsel go into your chambers—How about that, Welly?

The COURT. All right.

Mr. HOPKINS. That is entirely all right.

Mr. PADWAY. Suppose you do that, then, gentlemen.

(Counsel thereupon left the room.)

Mr. HOPKINS. Your Honor, we had planned, as was suggested to the Court on Wednesday, on the allocation of various phases on different points, Mr. Edmund Burke, of Springfield, Illinois, one of the attorneys representing defendants, with your permission, will address himself to point 4.

Mr. T. C. Townsend, of Charleston, West Virginia, has covered points 2 and 3 and he is the gentleman now making use, with your indulgence, of your library.

Mr. Edmund Burke will address the Court now on point 4.

The COURT. I will be very glad to hear you, sir.

Argument on Behalf of Defendants on Point 4

Mr. Burke. Point 4, if the Court please, is that the objection in support of the motion to vacate and discharge the rule is that the objects of the petition for the rule to show cause, the necessary objects of it, are punitive, not compensatory.

Now, if the Court please, the prosecution in this case has evidently elected to proceed here on the theory that this is a civil contempt proceeding and, in accordance with that election, they have filed the petition for the rule to show cause and entitled it in the original and principal cause. The petition is presented in the name of the United States, plaintiff. The prayer of the petition asks—specifies no form of relief asked for; whether it is to be punitive relief or remedial relief granted to promote the remedy sought by the plaintiff in the original complaint.

Now, if the Court please, the question arises here whether or not under the circumstances shown on the face of the complaint in this case, the United States, having averred no private proprietary, pecuniary interest, alleging no property rights that is sought to be safeguarded by this contempt procedure, has a right to maintain it at all.

Now, if the United States had some proprietary interest or right, there would be no question, perhaps, about its right to proceed in the form it has elected to proceed in. But, if the proceeding is punitive, if the Court is to proceed and plaintiff desires the Court to proceed on the theory that the contempt proceeding is punitive, then they have not complied with the rule promulgated by the Supreme Court with reference to the institution of criminal contempt proceedings.

A criminal contempt proceeding, if the Court please, is between the Court and the contemnor, or relator. The plaintiff is not concerned with the criminal contempt proceeding.

The criminal contempt proceedings or, for that matter, a civil contempt proceeding, is used to punish in one instance an affront to the dignity of the Court.

That is the criminal contempt, and in the other, to compensate—either compensate the plaintiff for violation of some lawful order made by the Court, or to protect his private property rights and interests. That is the purpose of a civil contempt proceeding.

The Court. At this point, in order to get your argument for that reason alone—for that purpose alone—I call your attention to the fact that the restraining order asked for is not for the purpose of punishing the defendants under Section 6 of the Smith-Connally Act, but for the purpose of giving the Court an opportunity to decide on whether or not the contract between the Federal Government and the Union had expired.

Now, proceed, sir. I just wanted to give you that thought.

Mr. Burke. Then, as we understand it, this is not a punitive proceeding at all.

The Court. It is exactly what I have said it was, sir.

Mr. Burke. Now, if the Court please, a case in 94 Fed. 2d—I have not that language here—a claim case, I think we have that cited in a brief, if the Court please. I did not expect to argue this question this morning, and I beg the Court's pardon for not being entirely prepared to proceed.

The COURT. Take your own time, sir.

Mr. BURKE. That is 94 Fed. 2d, page 862. I have somewhere a memorandum pertaining to the course of that case, but here was the substance of it, just from memory.

The Federal Trade Commission obtained from the Circuit Court of Appeals of the Seventh Circuit a cease and desist order in connection with some of the activities of the Federal Trade Commission, an agency, of course, of the United States, and exercising the powers of the United States.

In that case they proceeded by way of civil contempt—as the case proceeded in the Circuit Court of Appeals, the Court concluded that the Federal Trade Commission, being a mere agency of the Government, and having no private right or interest whatever in the subject matter of the controversy, could not maintain a civil contempt proceeding. The prosecution then undertook to change the character of the proceeding by arguing that it was a criminal contempt proceeding, and the Court very promptly disposed of that by saying that the contemnor, the relator, had a right to know then and there at the very inception of the proceeding what the nature of the proceeding against him was.

The COURT. That is true in any case.

Mr. BURKE. Yes; that is true.

208 And the Court said further that, there being no facts in that case that made the Court feel that it should proceed on its own motion or proceed by way of criminal contempt, that is, in a proceeding between the Court and the contemnors, that the matter would be dismissed.

Now, that, if the Court please, is our contention here; that if the Government is prosecuting its case in its proprietary capacity, on the face of the proceeding, that very contention is overcome because it is shown by exhibits attached to the complaint and by the complaint itself that there is no private interest whatever of a sort that it is appropriate to protect in a civil contempt proceeding.

209 Now, that is the difference between the two proceedings, as we understand it.

The COURT. But if you know the exact difference between civil contempt and criminal contempt, you are the only person in the United States who does.

Mr. BURKE. I think, if the Court please, that that confusion between civil contempt and criminal contempt has been very largely cleared up by the recent ruling of the Supreme Court, which clearly makes a distinction. The distinction is this: One is a case between the Court and the relator; the other is a case between the plaintiff and the relator. The Court very clearly clears up that confusion by directing that in the case of criminal contempt the Court shall institute it by notice; in other words, the Court does it. The Court may even direct counsel—special counsel of its own selection or the United States Attorney or anyone else. He may, if he wishes, select a representative of the plaintiff and direct him to prosecute the case in behalf of the Court. Then you have, under the rules of the Supreme Court, for the first time, a criminal-contempt proceeding, if the Court please. Any other contempt proceeding is necessarily under that rule established by the Supreme Court a civil-contempt proceeding.

We maintain, if the Court please, that the Government has no
210 such standing on the facts shown here as to entitle it to maintain a civil-contempt proceeding at all. That is the reason why that No. 4, if the Court please, was put in there.

Now, if the Court please, here is a case in the Circuit Court of Appeals for the Eighth Circuit, Merchants' Stock and Grain Company v. Board of Trade of City of Chicago.

"Contempts prosecuted to preserve the power and vindicate the dignity of the courts, and to punish for disobedience of their orders, are criminal and punitive in their nature, the Government, the courts, and the people being interested in their prosecution; while those instituted to preserve and enforce the rights of private parties to suits, and to compel obedience to orders and decrees made to enforce such rights, and to administer the remedies to which the Court has found the parties to be entitled, are civil and remedial and coercive in their nature, the parties chiefly interested in their conduct and prosecution being the individuals whose rights and remedies they are instituted to protect and enforce."

If the Court please, that is a fair statement, I think, of the difference between a civil proceeding and a criminal proceeding in contempt. In other words, if the Government here has not disclosed by its pleadings, has not disclosed by the complaint and the exhibits attached to the complaint, such a private interest or right—proprietary interest or
211 right—that the court of equity has jurisdiction to protect, then this is not the place for a civil contempt proceeding.

Thank you.

Mr. HOPKINS. With the Court's indulgence, we will see if the other authorities have been obtained by Mr. Townsend. If so, we will undertake to proceed just as quickly as he can be brought in from chambers.

The COURT. Very well.

Mr. HOPKINS. With the Court's indulgence, I will determine that.

(After a time Mr. Townsend entered the courtroom, and the following occurred:)

Mr. TOWNSEND. If the Court please——

The COURT. Proceed, sir.

Mr. TOWNSEND. I think the brief filed—the memorandum filed—by the defendants in this case is sufficient with reference to point 2. I am not prepared to discuss point 2 at any great length, if at all.

With reference to point 3—your Honor has it before him, I assume——

The COURT. Yes, sir.

Mr. TOWNSEND. I take the position—and I use the word "I" because others may differ from me—that we are dealing here with criminal contempt, not with civil contempt.

Inasmuch as it is a criminal contempt, all the strict rules of criminal procedure apply.

212 In the case of Michaelson v. United States, found in 266 U. S. 66, the Supreme Court of the United States said this:

"In criminal contempt, as in criminal cases, the presumption of innocence obtains. Proof of guilt must be beyond reasonable doubt."

The COURT. Suppose the defendant comes in and pleads guilty.

Mr. TOWNSEND. How is that?

The COURT. Suppose the defendant comes in and pleads guilty.

Mr. TOWNSEND. This defendant is not going to do that, as I understand it.

The COURT. He did it before you came to town—that is, provided that the Norris-LaGuardia Act does not apply.

Mr. TOWNSEND. If your Honor please, there has never been any plea entered, as I understand it.

The COURT. No; counsel for the defendant arose and said that the defendant admitted he had not complied with the Court's order. That is what I mean.

Mr. TOWNSEND. Well, I did not understand it that way, your Honor.

The COURT. Well, that is the fact.

Mr. TOWNSEND. I didn't understand that that was any plea of guilty on the part of the defendant.

213 The COURT. No, no; it is a plea of guilty under certain circumstances. It is a plea of noncompliance with the Court's order, which would be guilt, possibly, certainly if the Norris-LaGuardia Act does not apply.

I am just asking if that changes your view about what the Court said in that case.

Mr. TOWNSEND. As I understand this situation as it is now presented to this Court, we are discussing the motion to dismiss and discharge the rule.

The COURT. Yes.

Mr. TOWNSEND. Now, when the Court passes upon that, if the Court should overrule that motion, then, as I understand the procedure in criminal contempt, the defendant will then plead not guilty.

The COURT. But, you see, the——

Mr. TOWNSEND. And then, upon his not-guilty plea, the Government will have to make its case.

The COURT. The Court is not now passing upon, or has not passed yet upon, the question whether there is any technical criminal contempt, or civil contempt either, insofar as we have proceeded in this case.

But before this motion was filed—the motion was filed—the motion was filed on November 26—now, as I remember it, on the first day of this hearing Mr. Hopkins stating that he represented all the

214 defendants, admitted for the record that the order of the Court had not been complied with.

Now, the question is whether after that admission is in the record, a motion subsequently to that, and certain procedural rules which would apply in a criminal-contempt proceeding had not been complied with—whether the motion is inappropriate in view of the admission.

Mr. TOWNSEND. Well, here is the exact language Mr. Hopkins used:

"The defendants, and each of them, deny the jurisdiction of this honorable Court to have issued the temporary restraining order and rule to show cause issued thereon. They will be prepared to present arguments on these questions on November 27, the time fixed by the Court, as we understand it, for hearing this case."

The COURT. That is not all he said, sir.

Mr. TOWNSEND. Well, that is the only thing I have here, sir.

The COURT. He made the categorical statement that no action then had been taken by the defendant to carry out the order of the Court.

Mr. TOWNSEND. Well, even at that, assuming that that had been admitted, which I do not assume, because I do not remember it, Your Honor——

The COURT. Maybe you were not here; I do not remember that you were——

215 Mr. TOWNSEND. Yes, I have been here all along since the case started.

The COURT. All right.

Mr. TOWNSEND. But assuming that that is true, the defendant has the right, I think, yet to enter a plea of not guilty. He has not pled his guilt.

May I go ahead?

216 The COURT. Of course; yes, sir.

Mr. TOWNSEND. I had just finished reading what the Supreme Court laid down as the rule with reference to criminal contempts, and under this decision, and in fact under the decisions of all courts that have dealt with this question of criminal contempt, the burden is upon the Government to establish the guilt of the accused beyond all reasonable doubt.

In view of that declaration in the Michaelson case, and in view of the recognized criminal procedure and the measure of proof that is required in criminal contempt cases, I want to refer to the Government's rule and the petition filed upon which the rule is based, and to Mr. Collisson's affidavit.

You can take this rule and the petition of the Attorney General and the Collisson affidavit and hold them up by the four corners and examine them with a magnifying glass and you cannot find any charge contained in the rule or in the petition or in the affidavit except upon information and belief.

The COURT. Let me ask you a question there, sir.

Mr. TOWNSEND. Yes, sir.

The COURT. As I remember the Collisson affidavit, or state-

217 ment—I don't know whether it was sworn to or not, I don't remember—but as I remember, those allegations which were based on information and belief, all those substantial allegations have been admitted, have they not? Isn't that true?

Mr. TOWNSEND. I don't understand, so, Your Honor. We do not admit them.

The COURT. All right, sir. Proceed.

Mr. TOWNSEND. That is not my understanding of it, sir.

The COURT. Proceed.

Mr. TOWNSEND. If this is criminal contempt, and it has every attribute of criminal contempt as that term has been defined by the Supreme Court of the United States in the Ray Grossman case, he cannot be tried upon a statement that contains nothing except belief, that he has information and belief that he has committed a criminal offense, and that is what this is.

It occurs to me, Your Honor, that this may illustrate what I mean. Let's assume the Grand Jury returned an indictment upon information and belief, certainly a defendant couldn't be tried. What is the indictment in this case? The indictment in this case is the rule that was issued against the defendant to show cause, and that rule must be and should be as definite and as certain and charge the

offense that this defendant has admitted with as much particularity as if he were being tried upon an indictment.

I want to give Your Honor the benefit of one other citation, and then I think that is all I have to say,

Chief Justice Taft in the case of Ex Parte Grossman, 267 U. S. 111, used this language with reference to civil and criminal contempts:

"In the Gompers case the Court points out that it is not the fact of punishment but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts the punishment is remedial and for the benefit of the complainant, and a pardon cannot stop it. For criminal contempts the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions."

The COURT. Won't you read that again, please? There are just a few words at the beginning that I didn't catch.

Mr. TOWNSEND.

"In the Gompers case the Court points out that it is not the fact of punishment but rather its character and purpose that makes the difference between the two kinds of contempts. For civil contempts the punishment is remedial and for the benefit of the complainant, and a pardon cannot stop it."

The COURT. Who cannot stop it?

Mr. TOWNSEND. A pardon.

The COURT. A pardon, yes.

Mr. TOWNSEND. A pardon cannot stop it.

The COURT. I didn't understand what the word was when you first read it.

Mr. TOWNSEND.

"For criminal contempts the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions."

Your Honor, this case came up to the Supreme Court of the United States in this way: Under the Constitution of the United States the President is given power to pardon offenses. The Constitution uses the word "offenses."

Grossman had been found guilty of criminal contempt in the City of Chicago. He was sentenced to jail. An application was made to the President for a pardon, and the President pardoned him. Then the question came up to the court as to whether or not the President had power to pardon Grossman, and Chief Justice Taft treats criminal contempts as a crime, and inasmuch as it is a crime that vests power in the President of the United States to pardon.

Everywhere the offense with which we are dealing here today, from authorities that I have examined, I think that this is a question of criminal contempt and criminal contempt only, and that the Government has not made a prima facie case of criminal contempt against this defendant. That is all. Thank you.

Mr. SONNETT. If Your Honor please, the distinction between civil and criminal contempt is, as the Court has pointed out, a difficult one.

Most of the cases I believe which have touched upon the subject have sought to distinguish the two by referring to the purpose and character of the punishment imposed.

In this case I think the simple answer is, since the complainant is the United States, or the people of the United States, that this contempt is both civil and criminal.

So far as the procedural aspects of the matter are concerned we have complied in our papers with the requirements of every possible statute, rule, or case.

I come first to the rules of criminal procedure, Rule 42 of the recent rules approved by the Supreme Court, which provides as to criminal contempt, subparagraph (b), as follows:

"Disposition upon notice and hearing. A Criminal contempt except as provided in subdivision (a) of this rule shall be prosecuted on notice."

Subdivision (a), as the Court will recall, deals with the
221 power of a court to punish summarily for contempts committed in its presence.

Subdivision (b) continues:

"The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the essential facts constituting the criminal contempt charged and described as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the United States Attorney or of an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest."

In this case our notice consisted of the petition and supporting affidavit of Captain Collisson, together with this Court's rule to show cause why the defendants should not be punished as and for a contempt, clearly and completely meets the requirements of the rules of criminal procedure.

Secondly, the rule to show cause, as Your Honor pointed out at a previous hearing, is patterned upon the provisions of Section 387 of Title 28 of the Judicial Code which sets forth the procedure to be followed in the ordinary case of punishing criminal contempts.

The Court. I think the Court should say at this point that the reason the Court signed its order under Section 387, which bore upon criminal contempt mentioned in section 386, was under its general equity powers.

222 The Court thought it had a right to adopt that proceeding if it saw fit to do it, irrespective of the language of the statute.

The Court did not mean by passing thereon, at all, that the order was passed under Section 386. The Court was of the opinion then, tentative opinion, that Section 389 is the applicable section, if the Norris-LaGuardia Act does not apply.

Now, proceed.

Mr. Sonnett. The Court's initial order, as Your Honor has just pointed out, although patterned on Section 386, did not and was not required to follow the requirements of that section, because in Section 389 of the Judicial Code it is provided that:

"Nothing in the Judicial Code shall apply to contempts committed in disobedience of any lawful writ, process, order, rule, decree, or command entered in any suit or action or prosecuted in the name of, or on behalf of, the United States, but that such proceeding may be punished in conformity to the usages at law and in equity prevailing on October 15, 191[illegible]

Those requirements the papers have clearly met.

The fact that the same acts in violation of a temporary order restraining the defendants, or a temporary injunction, may constitute at the same time both a civil and criminal contempt, appears clearly from the decisions of the Supreme Court in Gompers against Bucks Stove & Range Company; both cases, the first in 221 U. S., the second in 233 U. S.

The COURT. They are leading cases, I think. Almost all the late cases refer to those cases.

Mr. SONNETT. That is my understanding, Your Honor. It is true, in our opinion, that where the contempt is both civil and criminal, the criminal aspect is dominant and fixes the character of proceeding, at least for procedural purposes, and accordingly, in order that there may be no possible question, the Government was prepared and is prepared to prove the guilt of the defendants beyond a reasonable doubt. It is settled law, if Your Honor please, that no indictment or information is necessary for the trial of a criminal contempt case.

Squarely in point I believe is Jennings vs. The United States in 264 Fed. where the Circuit Court for the Eighth Circuit so held.

The procedure here followed by the United States, we believe, is squarely supported by the decision in Forest vs. The United States in 277 Fed., United States ex rel Brown vs. Lotrer, 140 Fed. (2d), and United States vs. Balaban, 26 Fed. Sup.

224 Those cases indicate clearly that the approved practice in criminal contempt proceedings is for the United States to file a pleading, whether denominated a motion, a petition, or information is immaterial, with supporting affidavits, as a basis for the issuance of a rule to show cause.

The COURT. What do you think of the proposition as to whether or not when this proceeding was originally instituted it was instituted for the purpose of preventing a violation of the criminal law?

The Court's understanding of the petition was that at that time the Government hadn't any interest in Section 6 of the Smith-Connally Act, but was endeavoring only to secure an interpretation of the contract between the Federal Government and the labor union, and that the restraining order was not issued primarily for the purpose of preventing a violation of the criminal law but for the purpose of giving the Court an apportunity to ascertain what a proper interpretation of the contract was between the Federal Government and the labor union.

I should like to have you comment upon that.

Mr. SONNETT. I think Your Honor's summary accurately sets forth the Government's views when it instituted proceeding.

I think, however, that as the matter now stands before the Court on the papers before the Court, the papers in accordance with any 225 requirement of rule, statute, or practice, clearly set forth both a criminal and a civil contempt.

The fact that the act which was restrained might also have been a violation of criminal law, of course, as Your Honor is well aware, does not prevent a court of equity from enjoining that act where the performance would cause irreparable injury.

226 Finally, if the Court please, I think it is apparent from the motion of the defendants that they are fully aware that this

act—action on the part of the Government has given them notice of criminal aspects wholly apart from the civil aspects, and we think we clearly have.

We will be prepared to meet the procedural requirements for both civil and criminal contempts.

Accordingly, it is our view that the grounds of the motion now being argued before the Court, grounds 2, 3, and 4 of the defendants' motion, are without substance.

The COURT. Anything further, gentlemen?

Mr. HOPKINS. If you will pardon us one second, Your Honor.

Mr. Burke wanted to advert to his opening argument and to quote from a given case——

The COURT. You have the right of course. You are the moving party.

Mr. HOPKINS. He merely wants to add the quotation from the McClain case that he did not have before him.

The COURT. Yes.

Mr. BURKE. At the moment, if the Court please, I did not have my memoranda on that case that I used.

The Federal Trade Commission case, a claim case, 94 Fed. 2d 802.

That was a case, if the Court please, where the Federal Trade
227 Commission instituted a civil contempt proceeding in the Circuit Court of Appeals for a violation of a cease and desist order that had been made by the Court at the request of the Commission.

The Court said that "having found that the protection of private rights was emphasized throughout the cases relating to civil contempt proceedings as their principal purpose, we became convinced that the Commission, an agency of the Government representing no private interest of its own, but acting solely in the public interest, having no such standing as a private party that it could utilize procedure intended to safeguard the rights and interests of private parties."

Now, that is our position here, if the Court please. It is not a question of anything but parties.

Had the United States shown or can it show such interest in its complaint, such private interest as is appropriate to be protected by a civil contempt proceeding?

We say not, if the Court please.

Mr. TOWNSEND. May I say just a word, if the Court please, on what has been said by the Assistant Attorney General?

The COURT. Proceed, sir.

Mr. TOWNSEND. With the law entirely clear as to the character of criminal contempt and the authorities prescribing that the technical procedure must apply to criminal contempts to the same extent
228 that it applies to any other crime, we find ourselves now, after the remarks of the Assistant Attorney General—after three days in this court, the Assistant Attorney General openly admits to this Court and to the world that they are prepared to try this defendant on either criminal or civil contempt, going or coming, in the teeth of the law which says, repeatedly, time and again, by eminent authority, that criminal contempt is a crime and the defendant must be charged—properly charged—with having violated some rule or order of the court.

It is not sufficient to say in a criminal case or in criminal pleadings to resort to generalities as this pleading does, and the Attorney General substantially admits that, today he has not advised this defendant whether he is charged with criminal contempt or civil contempt.

And then, here is the rule which we don't think has been complied with at all.

May I refer Your Honor to it?

Rule 42, criminal contempt:

"A criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt, and that it was committed in the actual presence of the court. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

229 "(b) Disposition upon notice of hearing. A criminal contempt, except as provided in subdivision (a)—"

And that is what I have just read—"of this rule shall be prosecuted upon notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense and shall state the essential facts constituting the criminal contempt charged and describe it as such. Notice shall be given orally by the judge in open court in the presence of the defendant, or on application of the United States Attorney or an attorney appointed by the Court for that purpose by an order to show cause or an order of arrest."

And so forth.

Now, I submit, Your Honor, that this affidavit filed in this case upon which the rule is based and the petition of the Attorney General does not bring this criminal contempt charge within the terms of the rules laid down for the trial of criminal contempts.

Now, in support of this rule, here is a good deal of citation and authority.

The requirement in the second sentence, that the notice "shall describe the criminal contempt as such, is intended to obviate the frequent confusion between criminal and civil contempt proceedings,

230 and follows the suggestion made in McCann versus New York Stock Exchange, 80 Fed. 211 (CCA 2d)."

Now, just what can we do with that rule in view of the status of this case? We cannot ignore it. I don't think we can, at least.

If this is criminal contempt and the Assistant Attorney General does not say that it is not a criminal contempt—if it is criminal contempt, the pleadings do not bring it within this rule laid down by the Government for this court.

Mr. SONNETT. May I in rebuttal, Your Honor, mention just briefly two things.

First: Prior to the hearing before the Court on Wednesday, the defendants served a notice upon the Government, which notice is now the motion being argued before this Court.

Counsel's argument, I think, and most respectively assert, proves too much. Because, the defendants' own motion served the day before the last hearing characterizes this proceeding as one for criminal contempt. Under no possible theory could they have been in any way misled, because Ground 3 of their motion says:

"Observance of all the strict rules of criminal procedure is required to establish criminal contempt."

Ground 4 of their motion says:

"The object of the petition for the rule is necessarily punitive and not compensatory. Accordingly, it being for criminal contempt."

231 And then they argue it should have been presented as an independent proceeding.

Accordingly, it is clear that before this matter came to the Court on the 27th, the defendants, through their counsel, were fully on notice and so characterized this proceeding, themselves, as one for criminal contempt.

Secondly: The purpose of notice, I respectfully submit, is merely to be sure that the defendants, by default, do not ignore any right which they might have during these proceedings as a matter of substance which they would have if it were criminal and not civil.

The Government has stated, and again states, that it has and does intend to see to it that whatever rights the defendants would have under any theory, whether criminal or civil, or both, the defendants should have.

Mr. HOPKINS. Just one additional thought, if it please the Court.

The COURT. Yes.

Mr. HOPKINS. In addition to the thought as presented by Judge Townsend under Rule 42, which defendants respectfully suggest to the Court has not been complied with by Government, and that it is the rule guiding this and all other courts; in answer to Mr. Sonnett just at the moment where he says that the defendants are on notice

that it is criminal contempt, because of the wording in our
232 motion to discharge and vacate the rule, I say, sir, that if his remarks just now are to be interpreted as admitting the efficacy of Point 4 of the motion to discharge and vacate, to wit, that the object for the petition, the rule is necessarily punitive and not compensatory, and accordingly, it being for criminal contempt, petition should have been presented as an independent proceeding and not as supplemental to the original cause—that is quoting our Point 4,

If his remarks, sir, are an admission by Government that that point is well taken, sir, then we respectfully submit this motion should be sustained by Your Honor. Bearing in mind the efficacy and the weight of Rule 42, when it says to Your Honor—and it said to the Government—"that a criminal contempt, except as provided in subsection (a) of this rule, shall be prosecuted on notice. The notice shall state the time and place, allowing a reasonable time for the preparation of the defense."

And now, sir, what else does it say?

It says that that "shall state the essential facts constituting the criminal contempt charged, and describe it as such."

And I challenge the Government to say that they have met that rule.

233 There is nothing, sir, in the petition for the rule, there is nothing in the supporting affidavit for the rule, there is nothing in the rule itself, that complies with that, I submit to Your Honor, because the petition and these alleged supporting affidavits are hearsay that that cannot, sir, meet the requirements of the rule.

And therefore we submit with all due respect, but with all earnestness to you, sir, that upon Point 4 alone this motion to vacate and

discharge is good, and Your Honor, taking cognizance of the Government's own admission here today, that it does not know whether it is civil or criminal, that it is undertaking to proceed on both; it cannot ride two horses in different directions at the same time.

Bearing in mind the strict rules of criminal contempt, this defendant, sir, individually and in his official capacity, and the various multiplied thousands of men who compose the mine workers that are likewise before your court under this rule, are entitled to strict compliance by the sovereign government when it alleges that it moves against 400,000 people in its sovereign capacity.

We say to you, sir, with all earnestness that can be applied to the point, that they are entitled to performance under this rule. It is their right and it is the right and duty of government to meet it, and, not having met it, sir, then we are entitled at your hands, as we see it, that this rule be dismissed, vacated, and discharged, because,
234 if Rule 42 means anything, and if the interpretations under it mean anything, it means just what it says, that it "shall be described as such."
235 The footnote to that requirement in the second sentence, that the notice shall describe the criminal contempt, as such, is intended to obviate the frequent confusion between criminal and civil contempt proceedings.

Sir, the gravity of the charge here more than ever brings into play the efficacy of this rule. It was laid down for the purpose of defending men who are hailed before the bar of justice. We submit to you, sir, with all the earnestness that a man can pour into a subject, that now before your Honor, on the Government's own admission, is an error, and such an error, such an omission, as not only to entitle this Court, but to require it, in the name of justice, in the public interest, sir, that labor and all men may know their rights hereafter, that the rule to vacate and discharge be granted by your Honor.

Adverting again, in support of that statement, let it be again borne in mind that the Supreme Court of the United States has said in the Michaelson case that "Proof of guilt must be beyond reasonable doubt, and the defendant may not be compelled to be a witness against himself."

Yet the Government here this morning says to you, sir, "We do not know whether it is civil contempt, we do not know whether it is criminal contempt, we do not know whether it is blended; we do not know which way we are proceeding."

Therefore, the Government in its alleged sovereign capacity is asking this Court to take a position which is diametrically
236 opposed to the doctrine of the Michaelson case and the rule laid down under Section 42 (b).

Sir, with all the feeling that it is possible to put into the point before your Honor, I say to you now that the public interest, right, and justice require that the Government be required to meet the solemn obligation under these doctrines and these rules well known to it, and we therefore respectfully say to you, sir, that the motion to discharge and vacate upon all five points, but standing upon point 4 alone, in justice and as a matter of right should be sustained and granted by your Honor.

The COURT. Gentlemen, the Court is ready to rule.

It happens that the Court was a Member of Congress at the time the Norris-LaGuardia Act became law and during the debates in the consideration of it. Mr. LaGuardia and I were legislatively always very close. I think I am correct in saying that I supported every measure that he was interested in—I mean primarily interested in—and that he supported every measure that I was primarily interested in. He directed his activities principally toward the labor movement in what he considered the public interest; and mine were directed toward the currency.

As I said before, I am sure he always supported me; and, as far as I remember, I always supported him. So I am sure I am thoroughly familiar with the Norris-LaGuardia Act and its purposes and the reasons for it.

It is notorious that around, I guess, from 1890 on, the Federal courts were used by powerful interests for the purpose of defeating attempts on the part of labor to improve their welfare, increase their wages, improve their living conditions, and to help themselves in various ways.

Now, it takes a long time to arouse the public, sometimes, but the Clayton Act was the first affirmative expression of their resentment of the action of the courts, and the Norris-LaGuardia Act was the
238 culminating expression of their feeling that the courts were entirely in the wrong in the way they issued injunctions in labor disputes.

The Court remembers very distinctly the amendments that were offered by Mr. Beck, I think, of Pennsylvania—and I forget who offered the others—which endeavored expressly to exclude the United States in practically all cases, under all circumstances, from the operation of the Norris-LaGuardia Act. But those in favor of the Act felt that an inclusion—an express inclusion—might defeat the purposes of the Act in a great many cases, and that the Government was amply protected by the general principle where the Government was not specifically mentioned or included by necessary implication in a given case—that the language of the Act did not apply to the Government.

The leading case on that subject in this country—and it is still in force and effect—is the case of the Dollar Savings Bank against the United States, found in 19 Wallace at page 227. In that case the Federal Government brought an action of debt in Pennsylvania to collect a tax. The statutes provided that an ordinary common-law action of debt was not applicable in cases for the collection of taxes. There is a special statute that would ordinarily cover a case of that kind, a special statute for the collection of taxes.

The Federal Government brought an ordinary action for the collection of debt at common law, which the Savings Bank
239 contended was not legal. Here is what the Court said. The Court did not take that view. The Court held that an ordinary action of debt if brought by the United States would lie. This is what the Court said:

"It is a familiar principle that the King is not bound by any Act of Parliament unless he be named therein by special and particular

words. The most general words that can be devised (for example, any person or persons, bodies politic or corporate) affect not him in the least, if they may tend to restrain or diminish any of his rights and interests."

Certain cases are cited.

"He may even take the benefit of any particular Act, though not named. The rule thus settled respecting the British Crown is equally applicable to this Government, and it has been applied frequently in the different States and practically in the Federal courts. It may be considered as settled that so much of the royal prerogative as belonged to the King in his capacity of *parens partiae*, or universal trustee, enters as much into our political state as it does into the principles of the British Constitution."

As I said before, that is the leading case.

But the Court feels that the doctrine is stated with more and greater clearness than anywhere else that the Court has found it in Black on Interpretation of Laws, Second Edition. I am reading from pages 94 and 95.

240 "General words in a statute do not include nor bind the Government by whose authority the statute was enacted, where its sovereignty, rights, prerogatives, or interests are involved. It is bound only by being expressly named or by necessary implication from the terms and purposes of the Act.

"This is a very ancient rule of the English law and is equally applicable to the national and state governments in this country. It is said that laws are supposed to be made for the subjects or citizens of the State, not for the sovereign power. Hence, if the Government is not expressly referred to in a given statute, it is presumed that it was not intended to be affected thereby, and this presumption, in any case where the rights or interests of the State would be involved, can be overcome only by clear and irresistible implications from the statute itself. Generally speaking, therefore, the State is not bound by the provisions of any statute, however generally it may be expressed, by which its sovereignty would be derogated from, or any of its prerogatives, rights, titles, or interests would be divested, save where the Act is specifically made to extend to the State or where the legislative intention in that regard is too plain to be mistaken."

In this case, what society, what the sovereign power, was endeavoring to do was to hold a matter involving the public interest, a
241 matter involving a potential public calamity, by an entity which had been given power by the sovereignty itself, the labor union, from taking the contemplated action, which, as I said before, would amount to a public calamity, until there could be a judicial determination of whether it had the right to take such action.

The Court thinks that undoubtedly under the general rules which the Court has spoken of, the Norris-LaGuardia Act did not and does not apply; and following that opinion on the part of the Court, the Court had the same rights that the Court would have had prior to the passage of the Norris-LaGuardia Act and the Clayton Act.

So it is perfectly clear that prior to the Norris-LaGuardia Act and the Clayton Act, a court of equity had the right to enjoin a labor union which, in the opinion of the Court, was about to do something which was against the public interest, including the ultimate interest of the union itself.

The Court thinks that that opinion substantially disposes of this motion to discharge and vacate the rule to show cause, because under Section 385 of the United States Code Annotated the statement is made:

"The * * * courts shall have power to impose and administer all necessary oaths, and to punish, by fine or imprisonment, at the discretion of the court, contempts of their authority. Such power to punish contempts shall not be construed to extend to any cases
242 except the misbehavior of any person in their presence, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts in their official actions, and the disobedience or resistance by any such officer, or by any party, juror, witness, or other person, to any lawful writ, process, order, rule, decree, or command of the said courts."

The Court thinks the defendants were notified by the rule to show cause, in detail, as to what they were charged with having done; and if what they were charged with having done amounted to a criminal contempt, they had notice of the fact that it was a criminal contempt.

Of course, I myself noticed some time ago, several days ago, that part of the rule which requires criminal contempt to be alleged, to be one as such; but in view of the fact that the specific charges were stated in the rule to show cause, and those charges were of a character of which the defendant had notice, if they were criminal, the defendant had notice of the fact that they were criminal; and if it is a mistake not to have charged that the contempt was criminal specifically, it is not sufficient at all to vitiate the proceeding.

In this particular case, under the circumstances it is an omission that could do no one any harm. The Court does not think that the contention that freedom of speech has been violated is a matter for serious consideration. The Court repeats again what the Court
243 said several times on Wednesday: that this proceeding was for the sole purpose of holding the status quo until there could be a judicial determination of the contract between the United States and the United Mineworkers of America. The Court thinks that that must have been thoroughly understood by the union. It was thoroughly understood, certainly, by every other thinking person in the United States who was interested in the matter.

Furthermore, I think the Court should say that it was perfectly evident from the Court's order that what the Court was commanding was that this statement that the contract between the Union and the Government had expired should be rescinded, and that other matter in the order was simply ancillary to that, in order to prevent that particular requirement of the order being evaded.

The motion, gentlemen, to discharge and vacate the rule to show case is overruled.

Mr. SOKATT. The Government is ready to proceed, your Honor. Would you prefer a short recess, or shall we commence?

The COURT. The Court will take a 10-minute recess.

(At this time a short recess was taken. The following then occurred:)

The COURT. Gentlemen, the Court has been in consultation with counsel, and for reasons which the Court thinks are fair and proper, counsel have asked for a recess until half past 2. The Court

244 thinks that the request should be granted, and the Court will now take a recess until 2:30.

(At 11:50 o'clock a. m. the Court recessed until 2:30 p. m. of the same day.)

245 AFTERNOON SESSION

(The hearing was resumed at 2:30 o'clock p. m., pursuant to the taking of the recess.)

The COURT. Gentlemen, is there any matter you desire to take up with me?

Mr. HOPKINS. I didn't hear Your Honor, pardon.

The COURT. Is there any matter you desire to take up with me at this time?

Mr. HOPKINS. Just a second. At this juncture, Your Honor, and in order that the record may be abundantly clear, and in order that no question may hereafter be raised, procedurally or otherwise, as to the position of the several defendants, they now desire, both individually and in official capacity, the organization as such, to respectfully enter before Your Honor on the record a plea of not guilty.

The COURT. I understood that you wanted to raise another question, when you left my chambers this morning.

Mr. HOPKINS. Yes, sir; I would have made that statement, but I had anticipated Your Honor had some statement to make in reference to his own views on that, and then we would have a reply to make to it, sir. I could make it now if Your Honor would prefer.

The COURT. All right.

246 Mr. HOPKINS. Understanding from statements made by Your Honor from the bench, and suggestions made to counsel, that an advisory jury, as such, as set up in Your Honor's rule to show cause, bearing in mind that Your Honor has observed upon that point that such an advisory jury would perhaps prolong the trial of this case, and bearing in mind Your Honor's further observation that the questions involved here will be primarily questions of law, and deferring to Your Honor's observations upon that point, the defendants, in the sincerest desire of expediting this case and reaching a quick resolution of the issues involved, they, and each of them, Your Honor, hereby respectfully waive whatever rights the defendants may have under the law or under the rule to show cause, respecting an advisory jury.

That was the decision, Your Honor, that we sought time, as suggested to you and counsel in chambers, to arrive at, and we now make that statement for the record.

The COURT. And you make no request for an advisory jury?

Mr. HOPKINS. We make no request, Your Honor.

The COURT. Proceed.

Mr. SONNETT. The Marshal will call our first witness, if the Court please.

The MARSHAL. Are there any witnesses in the courtroom? If there are any witnesses in the courtroom, please step forward to the witness room.

247 The CLERK. All witnesses in the case on trial are asked to immediately step forward to the witness room. Thereupon—

NORMAN HARVEY COLLISSON was called as a witness for and on behalf of the Government and, having been first duly sworn, was examined and testified as follows:

The CLERK. State your full name, please.

The WITNESS. Norman Harvey Collisson.

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Captain, what is your occupation?

A. I a—

Mr. HOPKINS. If it please the Court, with all due respect, and in order that the record may be made clear, let the record show that before this witness has responded to any question, other than to the question of his name, to identify himself, defendants and each of them wish to state this objection to the record:

We object to the taking of the testimony of this witness, or any other witness, on the ground that the proceedings adopted by the Government here require a dismissal of these proceedings, and that these proceedings were not in compliance with law.

248 We further object on the ground that these proceedings are not in compliance with the statutes involved and the rules applicable.

We further object to the testimony of this witness, or any other witness, on the ground that the proceedings adopted by the Government here do not sufficiently inform the defendants, or either of them, of the nature of the proceedings against them or either of them; and therefore, to require the defendants, or any of them, under the proceedings adopted by the Government in this case, is prejudicial to the defendants, and each of them, and to their respective rights thereunder.

Clarifying it further, these proceedings are not sufficient to require these defendants to answer these proceedings, and that the proceedings as outlined by the Government and taken here are prejudicial to the defendants' rights, and each of them.

The COURT. Proceed.

Mr. HOPKINS. We will note our exceptions for the record, Your Honor, and we would like to know whether or not this broad objection as now made can be had successively into the record in order to avoid repetition as much as possible; that this broad objection now made may be accepted by the Court as being taken in each instance.

The COURT. You mean that the remarks you have now made
249 you desire not only to apply to this witness but to any other witnesses called by the Government?

Mr. HOPKINS. Yes, Your Honor.

The COURT. There is no reason why that should not be done. Of course the Court thinks that the Court passed on your motion this morning, sir. The Court thinks this is duplication. However, the Court has no objection to your putting it on the record.

Mr. HOPKINS. We thought it well from the viewpoint of the defendants to preserve it on the record.

250 DIRECT EXAMINATION

By Mr. SONNETT:

Q. What is your occupation, Captain?

A. Coal Mines Administrator.

Q. And for how long have you been Coal Mines Administrator?

A. Since October 1, 1946.

Q. What was your occupation prior to that time?

A. I was Deputy Coal Mines Administrator.

Q. During what period of time?

A. From July 20, 1946, to October 1, 1946.

Q. And what was your occupation before that?

A. I was Executive Officer to the Coal Mines Administrator, and prior to that Executive Officer to the Deputy Coal Mines Administrator.

Q. During what period of time?

A. From May 21, 1946, to July 20, 1946.

Q. Will you state, Captain, briefly, what your civilian occupation was before you became a member on active duty in the United States Naval Reserve?

A. I was a power engineer for the American Gas and Electric Service Corporation.

Mr. SONNETT. May I have marked for identification, if the Court please, Government Exhibit No. 1?

251 The COURT. Yes.

Mr. SONNETT. And offer it at the same time in evidence, it being a certified copy of the Executive Order of Seizure of the Mines.

(Thereupon, the document referred to was marked "Government Exhibit No. 1 for identification.")

Mr. HOPKINS. No objection, Your Honor, to the introduction of this.

The COURT. It will be received.

(Thereupon, Government Exhibit No. 1 for identification was received in evidence.)

Mr. SONNETT. If the Court please, without attempting at this time to go into the exhibit in full, may I merely suggest to the Court that this Order is based upon findings by the President that the interruption in coal production was injurious to the war effort and to the national economy, and to submit the Order to Your Honor.

The COURT. All right, sir.

Mr. HOPKINS. Of course, Your Honor, we don't accept that particular excerpt from the exhibit just offered Your Honor as being the entire purpose——

The COURT. Neither does the Court, sir.

Mr. HOPKINS. It is to be read within its four corners and the conclusion drawn by the counsel is not the conclusion drawn by the defendants.

The COURT. You are correct in that, sir.

252 Mr. SONNETT. If Your Honor please, I will ask the Clerk to mark these two documents which I now hand him as "Government Exhibits for identification, 2 and 3."

(Thereupon the documents referred to were marked "Government's Exhibits Nos. 2, 3, and 4 for identification.")

Mr. HOPKINS. I submit, Your Honor——

Mr. SONNETT. I have not offered the documents yet.

Mr. HOPKINS. I beg your pardon. I thought you had offered them.

Mr. PADWAY. Mr. Sonnett, do you want these three considered together?

Mr. SONNETT. If you will, please.

Mr. PADWAY. Mr. Sonnett wants the three considered together.

Mr. SONNETT. If the Court please, I offer in evidence certified copies of documents, being Government's Exhibit 2 and Government's Exhibit 3 and Government's Exhibit 4.

Government's Exhibit 2 is a certified copy of Order No. 2200 by the Secretary of the Interior in which he states that by virtue of the authority vested in him by the President of the United States by the Executive Order, which is Government's Exhibit 1, he takes possession of certain mines.

The COURT. What is the date of that, sir?

Mr. SONNETT. The Order provides that it shall become effective as of 12:01 A. M., May 22, 1946.

The COURT. Yes.

253 Mr. SONNETT. Government's Exhibit 3 is a certified copy of Order No. 2200–A, a similar supplementary order of the Secretary of the Interior dealing with certain additional mines taken under the same authority, and Government's Exhibit 4 is Order No. 2200–B of the Secretary of the Interior with respect to the operations under the Executive Order concerning the seized mines.

Mr. HOPKINS. If the Court please, the defendants, and each of them, object to the admission of the three documents, Government's Exhibits 2, 3, and 4, for the reason that they are not relevant to the issue on trial here, sit, to wit, the issue of a contempt.

The COURT. Well, I don't know that they are directly, but I presume they are introduced for the purpose of trying to preserve the continuity of the Government's procedure, aren't they?

Mr. SONNETT. In two respects, Your Honor, the Government thinks the exhibits are material.

First, the Government has alleged that a sovereign function was being performed by it with respect to the operation of the coal mines. These documents are submitted as evidence of the performance of that function.

Secondly, with respect to the question of irreparable injury, relevant of the issuance of the temporary injunction, we hope to

254 establish here, too, that the irreparable injury to the mines, or to the production of the mines, is based in part upon a showing that the Government had in fact taken over the mines.

So that we regard the evidence relevant and material on both questions.

Mr. HOPKINS. To which we respond, Your Honor, in turn, the question of sovereign function as alluded to by counsel; the question of irreparable injury as alluded to by counsel, as well as the motion for temporary injunction as alluded to by counsel, are not pertinent and relevant here, sir.

The question before Your Honor is one of contempt, and the defendants respectfully submit that the documents as offered, even under the Government's own offer of proof, and the reasons supporting it, do not make them relevant to the issue now on trial.

The COURT. Well, the Court has ruled this morning that the Norris-LaGuardia Act is out of the case. Then the matter resolves itself into the propriety, the legitimate propriety, in general, of the Court's action in issuing the restraining order.

The Court thinks this is clearly material, sir. The Court will have to overrule your objection.

Proceed.

Mr. HOPKINS. Note our exception.

The COURT. Yes.

205 (Documents heretofore identified as Government's Exhibit Nos. 2, 3, and 4 received in evidence.)

Mr. SONNETT. I will ask the Clerk to mark these documents for identification as Government's Exhibits Nos. 5, 6, and 7.

(Documents referred to were marked "Government's Exhibits Nos. 5, 6, and 7, for identification.")

256 The COURT. Are counsel waiting for something?

Mr. SONNETT. I am waiting for counsel for the defendants to finish their examination, if the Court please, of the documents I propose to offer.

The COURT. Oh, I see.

Mr. SONNETT. I offer in evidence, if the Court please, Government's exhibits 5, 6, and 7.

Government's exhibit 5 is a certified copy of an order by Secretary Krug, reading as follows, dated May 21, 1946:

"Instructions to the Telegraph Company. Send the following telegram to the mining company at address listed in the attached list:

"'Pursuant to the President's Executive Order, I assumed possession of the mines of your company at 12:01 a. m., May 22. Request you operate your mine and maintain full production. Letter follows.'"

Government's exhibit 6 is a certified copy of a letter, dated May 22, 1946, from the Secretary of the Interior, headed:

"To the President of the Mining Company."

It amplifies upon the telegram and instructions and advising the mining company that possession of the mine has been taken by the Government pursuant to the authority vested in the Secretary of the Interior by the President of the United States.

257 The COURT. Is that offered as an illustration of the different telegrams and letters sent to the different mine owners?

Mr. SONNETT. It is offered as a sample of all, because the same was sent in each case.

By Mr. SONNETT:

Q. Captain, am I correct in saying that Government Exhibit represents a letter which was sent in substantially the same language to the mining companies of all of the mines which the Government took under the Executive Order?

A. The answer is yes.

Q. Captain, I show you Government Exhibit 7, which is a printed notice, and ask you whether or not instructions were given by the Secretary of the Interior to have that notice, or a notice in substantially that form, posted at each of the seized mines.

A. Instructions were so given, and this is the notice.

Q. Would you read the notice, please?

A. "Notice: In accordance with the Executive Order of the President of the United States, Government possession of this coal mine has been taken by order of the Secretary of the Interior. Signed, J. A. Krug, Secretary of the Interior."

By the COURT:

Q. What is the date, sir?

A. It has no date, your Honor.

258 Mr. HOPKINS. Do I understand that the Government has made formal offer of Government Exhibits 5, 6, and 7?

Mr. SONNETT. The Government now offers those exhibits in evidence, if the Court please.

Mr. HOPKINS. In objection thereto, we restate the defendants' objections to these three documents as was stated in the acceptance of the documents Nos. 2, 3, and 4; to wit, that they are not relevant or germane to the issue in this case; further, that they were issued in May of 1946, some five or six months prior to the date of the temporary restraining order and the date of the proceedings involved in this case, to wit, the alleged contempt.

The COURT. The Court does not agree with you, sir. The objection is overruled. Proceed.

The Court thinks that these offers are part of the framework or background of the issue now before the Court. Proceed, sir.

Mr. SONNETT. The Clerk is making some additional formal exhibits, if the Court please.

The COURT. Yes.

(Thereupon Government's Exhibits 5, 6, and 7 were received in evidence.)

Mr. SONNETT. The Government offers in evidence Government Exhibits 8, 9, 10, and 11, if the Court please.

(Government Exhibits 8, 9, 10, and 11 were marked for identification.)

259 Mr. SONNETT. Government's Exhibit 8 is a certified copy of the order of the Secretary of the Interior designating Vice Admiral Ben Moreell as Deputy Coal Mines Administrator with certain powers.

Government's Exhibit 9 is an order of the Secretary of the Interior, dated June 5, 1946, dealing with the delegation of powers as Coal Mines Administrator to the Deputy Coal Mines Administrator, and designates Vice Admiral Ben Moreel, Deputy Coal Mines Administrator, as Coal Mines Administrator with powers to perform the functions of that office, and sets forth the functions of that office.

Government's Exhibit 10 is a certified copy of an order by Admiral Moreell, effective July 20, 1946, dealing with the designation of and delegation of powers to Deputy Coal Mines Administrator, and designates Captain N. H. Collisson, U. S. N. R., as Deputy Coal Mines Administrator with certain powers set forth in the order.

Government's Exhibit 11 is Order 2258 of the Secretary of the Interior Krug, designating Captain Norman H. Collisson, U. S. N. R., as Coal Mines Administrator to succeed Admiral Moreell.

Mr. HOPKINS. To which exhibits and tender defendants make the same general objection as heretofore stated to the Court.

The COURT. The Court thinks that these exhibits bear
260 directly upon the extent and nature of the control, of the sovereign power over the mines, in the public interest.

Proceed.

(Government Exhibits 8, 9, 10, and 11, previously marked for identification, were received in evidence.)

261 The COURT. Proceed.

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 12 and ask you if you can identify that, please?

A. This is a listing of mines in Government possessions previously seized pursuant to executive order, the date of this listing being revised to 15 November 1946. It contains a list of the mining companies and their addresses, the index number of the mine, the operating manager, and the areas in which they are located.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. No objection, Your Honor.

(The document heretofore marked "Government's Exhibit No. 12 for identification" was received in evidence.)

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibits 13 and 14 for Identification and ask you if you will please identify those?

A. Government's Exhibit No. 13 is the so-called Krug-Lewis agreement dated and effective May 29, 1946. It covers the terms and conditions of employment of those mines that were subject to the National Bituminous Coal Wage Agreement and were seized by the Government for the period of Government possession.

262 Mr. SONNETT. I offer the exhibit in evidence, if the Court please.

Mr. HOPKINS. No objection to that exhibit, Your Honor.

(The document heretofore marked "Government's Exhibit No. 13 for Identification" was received in evidence.)

By Mr. SONNETT:

Q. What is Government's Exhibit 14, Captain?

A. Government's Exhibit No. 14 is a formal application on the part of the Deputy Coal Mines Administrator to the Wage Stabilization Board for approval of the Krug-Lewis agreement, Government's Exhibit 13, and further contains a copy of order of the National Wage Stabilization Board dated May 31, 1946, and approved by the President of the United States as of the same date.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which we object for the reasons previously stated to Your Honor.

The COURT. Objection overruled.

(The document heretofore marked "Government's Exhibit No. 14 for Identification" was received in evidence.)

By Mr. SONNETT:

Q. I show you Government's Exhibit 15, Captain, and ask you to identify it, please.

263 A. Government's Exhibit No. 15 is Order No. CMAN-1, signed by the Deputy Coal Mines Administrator, dated June 1, 1946, and in it it directs all of the operating managers of the mines

previously seized by the Government pursuant to executive order, the terms and conditions of employment be amended to include those terms and conditions set forth in the Krug-Lewis Agreement of May 29, 1946.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which we object for the same general reasons stated, Your Honor.

The COURT. Objection overruled.

(The document heretofore marked "Government's Exhibit No. 15 for Identification" was thereupon received in evidence.)

By Mr. SONNETT:

Q. Captain, from time to time during the period of Government seizure of the mines, and prior to November 1, 1946, did you have conferences and meetings with representatives of the United Mine Workers of America concerning proposed changes in the so-called Krug-Lewis agreement?

Mr. HOPKINS. Before you answer, we object, Your Honor, for the following reasons:

This is a case on contempt before Your Honor. The question asked and the answer sought to be elicited is neither germane nor relevant to the issue on trial. We submit to Your Honor that the objection is well taken for those reasons.

264 Mr. SONNETT. If the Court please, one of the allegations of the charge of contempt is that the defendants wilfully did the acts with which they are charged.

The documents which we offer, and the evidence which we now propose to elicit from the Captain, we think respectively bear upon the issue of wilfulness.

The COURT. Were or were not these conferences held under the provisions of Section 5 of the Smith-Connally Act, in connection with the question which Government counsel asked?

The WITNESS. These were conferences that were held between the Coal Mines Administration and representatives of the Union, relative to changes or modifications in the existing Krug-Lewis Agreement.

The COURT. My question may not be clear to you.

The Smith-Connally Act provides in Section 5 the way and manner in which the contract between the Government and the Union can be modified.

In President Truman's proclamation when he took over the coal mines, the conditions under which they were taken over should be modified by Section 5 of the Smith-Connally Act, and what I am asking you is whether or not these conferences and any modifications which took place in the contract between the Government and the Union were made under the provisions of Section 5 of the Smith-Connally Act.

265 Mr. SONNETT. May I suggest, Your Honor, that by a question I think I might clarify what the Court has in mind.

The COURT. All right, sir.

By Mr. SONNETT:

Q. Captain, have you had any legal training at any time?

A. No; I have not.

Q. Are you able to state of your own knowledge whether these conferences were held pursuant to a particular provision of law, or not?

A. No; I am not.

Q. Are you able to testify concerning the facts of what transpired at the conferences?

A. Yes; I am.

Mr. SONNETT. The Government's offer of proof, if the Court please——

The COURT. I think the Court would have the right, in the absence of evidence to the contrary, to assume if conferences took place they took place in accordance with law. The law would be Section 5 of the Smith-Connally Act.

Proceed. The Court overrules the objection.

By Mr. SONNETT:

Q. Captain, did you answer the question as to whether or not——

Mr. SONNETT. Will the reporter read the question?

266 (Pending question read.)

A. Yes, sir; I did.

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 16 and ask you if you can state—first, what is that exhibit?

A. Government's Exhibit No. 16 is a memorandum of agreement between the Coal Mines Administrator and the United Mine Workers of America, through their president, dated June 12, 1946.

Q. Did that memorandum of agreement follow negotiations with representatives of the United Mine Workers of America?

A. It followed negotiations between the United Mine Workers of America and the Coal Mine Administration.

Q. What led up to the making of that agreement, Captain?

A. In the Krug-Lewis Agreement, May 29, 1946, there is contained a provision for a vacation period to be taken during the period June 29 to July 8, 1946.

The purpose of the meeting with the United Mine Workers of America was to ask their agreement for a lesser vacation period due to the fact that coal stocks throughout the country had been depleted in the lay-off occurring earlier in the year and the net result of such agreement was that instead of the ten days, as provided in the agreement, being utilized as a vacation, it was agreed that

267 Thursday, Friday, Saturday, and Sunday of the period of July 4, starting July 4, would be taken as a vacation, and the rest of the ten-day period would be worked in the interest of production. It had no effect, of course, upon the vacation payment.

Q. That was one instance then, Captain, when the Krug-Lewis Agreement was modified by mutual consent after negotiations with the defendant: Is that not true?

A. Yes.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. No objection, Your Honor.

(The document heretofore marked Government's "Exhibit No. 16" for Identification was received in evidence.)

By Mr. SONNETT:

Q. Captain, I show you Government's Exhibit 17 and ask you if you can identify that document?

A. Government's Exhibit No. 17 is a memorandum of agreement dated 27 June, 1946, signed by the Coal Mines Administrator and the President of the United Mine Workers of America, and it deals with the appointment of a custodian in lieu of trustees for the funds or moneys collected under Section 4 (a) of the Krug-Lewis Agreement, the Welfare and Retirement Fund.

Q. What, in substance, Captain, was the Welfare and Retire-
268 ment Fund under the Krug-Lewis Agreement to which you referred?

Mr. HOPKINS. We object to that, Your Honor, as asking for a conclusion of the witness. The agreement speaks for itself.

The COURT. I will have to sustain the objection.

Mr. SONNETT. I will withdraw the question and I will read that provision of the agreement, which I thought counsel was familiar with, if I may have the exhibit.

Mr. HOPKINS. If the Court please, we object to that procedure because it is not relevant here to the issue. The issue on trial is squarely before this Court. It is one of contempt.

Now, an offer to read the excerpt in reference to the particular section of the contract pertaining to the Health and Welfare Fund is not germane, relevant, material, or pertinent to the issue at trial here.

The COURT. Mr. Hopkins, during the various arguments that have taken place here it has been contended that there was no actual, substantial control by the Government of the mines; that they were really under private control.

Now, one thing this sort of testimony does is to establish or disestablish, as the case may be, just what exercise, superintendence, and control the Government did have over these mines during this period of the Krug-Lewis Agreement, and for that reason, if for noth-
269 ing else, the Court thinks they are relevant.

Mr. HOPKINS. Will the Court hear me right there for a moment on an additional reason?

The COURT. Yes, sir.

Mr. HOPKINS. The matter of sovereignty, the matter of Government possession, was addressed to the question of the application of the Norris-LaGuardia Act, Your Honor.

Now, Your Honor has already ruled upon that subject by your ruling of this morning. It is not pertinent on the issue of contempt, sir. We submit that the objection is well taken.

Were it on the Norris-LaGuardia Act then Your Honor's reasoning would probably be the correct one, but not on the square, narrow issue now before this Court.

The COURT. Of course, it is hard to give every answer to every question right off the reel, but one thing this could do might be to throw light to another court as to the correctness of the Court's ruling as to the Norris-LaGuardia Act. It might bear upon that question.

Mr. HOPKINS. We submit when the narrow issue of contempt is before Your Honor as it now is, the matter of reading the particular section from an agreement that deals not with contempt—if it were on the Norris-LaGuardia Act, yes—but Your Honor has ruled upon

that subject and it is not pertinent, germane, or relevant to the issue here.

270 Mr. SONNETT. If the Court please, the charges upon which these defendants are now on trial——

The COURT. When the Court rules with you, I would advise you not to make a comment. You might say something that would require the Court to reverse itself.

(There was laughter in the courtroom.)

Mr. SONNETT. I withdraw my argument, if the Court please. I was not aware of Your Honor's ruling, and I apologize.

The COURT. Yes, sir.

Mr. SONNETT. Referring to Government's Exhibit No. 13 in evidence, Section 4 provides—is headed "Health and Welfare Program" [Reading]: "There is hereby provided a Health and Welfare Program in broad outline, and it is recognized that many important details remain to be filled in.

"Such programs consist of three parts as follows:

"(a) A Welfare and Retirement Fund: A Welfare and Retirement Fund is hereby created and there shall be paid into said fund by the operating managers five cents per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees; one appointed by the Coal Mines Administrator, one appointed

271 by the President of the United Mine Workers, and the third chosen by the other two. The fund shall be used for making payments to miners and their dependents and survivors—" with respect to various purposes set forth in the agreement not at the moment material.

By Mr. SONNETT:

Q. Captain, I refer you to Government Exhibit No. 17 and ask you if you can identify that document.

A. Government's Exhibit No. 17 is a memorandum of agreement signed by the Coal Mines Administrator and the president of the United Mine Workers of America, dated 27 June 1946.

Mr. SONNETT. I offer it in evidence, if the Court please.

Mr. HOPKINS. To which we make no objection.

(Thereupon, Government's Exhibit No. 17, heretofore marked for identification, was received in evidence.)

Mr. SONNETT. Government's Exhibit No. 17 provides in part:

"The undersigned hereby agree as follows:

"Pending the appointment of trustees as provided in Section 4 (a) of the Krug-Lewis Agreement of May 29, 1946, the Postmaster General of the United States Navy is hereby designated to act as

272 custodian of the monies to be paid in accordance with the provisions of that section."

By Mr. SONNETT:

Q. Now, did that agreement, represented by Government's Exhibit 17, follow negotiations with the representatives of the United Mine Workers of America, Captain?

Mr. HOPKINS. To which we object for this reason, that there is no such position as Postmaster General of the United States Navy, as announced by counsel.

The COURT. What is the Postmaster General of the United States Navy?

Mr. SONNETT. I may have misread it, and I am very sorry, if the Court please, to have misled counsel, and I will be very happy to read it again.

I am certain that the objection goes to the substance of the matter.

The COURT. I understood you to say Postmaster General of the United States Navy.

Mr. SONNETT. I am sure I did, sir, and I apologize. It was a slip of the tongue, but since counsel has examined the agreement——

The COURT. I thought I had heard everything before, but——

Mr. SONNETT. It surprised me, sir.

I will read it again.

273 "The undersigned hereby agree as follows:

"Pending the appointment of trustees as provided in Section 4 (a) of the Krug-Lewis Agreement of May 29, 1946, the Paymaster General of the United States Navy is hereby designated to act as custodian of the monies to be paid in accordance with the provisions of that section."

Does the counsel still object, if the Court please?

The COURT. I don't know, sir.

Mr. HOPKINS. We offer no objection.

By Mr. SONNETT:

Q. Now, I will repeat the question, Captain.

Did that agreement follow negotiations with representatives of the United Mines Workers of America?

A. It did.

Q. Who is it signed by?

A. It is signed by Vice Admiral Ben Moreell, Coal Mines Administrator, and Mr. John L. Lewis, president of the United Mine Workers of America.

Q. Captain, I show you Government's Exhibit No. 18 and ask you if you can identify that document.

A. Government's Exhibit No. 18 is a memorandum of agreement, dated August 28, 1946, signed by the Coal Mines Administrator, and the acting president of the United Mine Workers of America,

274 which provides that a custodian of the funds collected for the medical and hospital fund under Section 4 (b) of the Krug-Lewis Agreement, is established.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. To which there is no objection.

(Thereupon, Government's Exhibit No. 18 for Identification was received in evidence.)

By Mr. SONNETT:

Q. Captain, going back for a moment to Government's Exhibit No. 17 which relates to the funds in the custody of the Paymaster General of the Navy for the Welfare Fund, how much, to the best of your information, is in that fund as of November 20, 1946?

A. Ten million one hundred thousand——

Mr. HOPKINS. Just a second. I did not get that question, Your Honor, and I wonder if counsel will have the Reporter re-read the question.

The REPORTER (reading):

"Q. Captain, going back for a moment to Government's Exhibit No. 17 which relates to the funds in the custody of the Paymaster General of the Navy for the Welfare Fund, how much, to the best of your information, is in that fund as of November 20, 1946?"

Mr. HOPKINS. Go ahead, sir. I did not get the question.

275 The WITNESS. Approximately $10,100,000 as of November 20, 1946.

By Mr. SONNETT:

Q. Captain, referring to Government's Exhibits 16, 17, and 18, which you have just seen, is it true that they represent three modifications of the Krug-Lewis Agreement which followed in each instance negotiations conducted by the Government with the representatives of the United Mines Workers of America, including at times the defendant Lewis?

A. That is correct, in the case of all three.

276 Q. Captain, I show you Government Exhibit 19 and ask you if you can identify that document.

A. Government Exhibit No. 19 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, to the Honorable J. A. Krug, Secretary of the Interior, dated October 21, 1946, and received by me in the absence of the Secretary of the Interior.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. No objection, your Honor.

(Government Exhibit 19 was thereupon received in evidence.)

By Mr. SONNETT:

Q. Captain, in that letter——

Mr. SONNETT. I will withdraw the question.

May I invite the Court's attention to the portion of this letter which requests a conference with the representative of the Government for certain purposes stated in the letter, and which suggests that under the National Bituminous Coal Wage Agreement, dated April 11, 1945, either party may give 10 days' notice in writing of a date for negotiating a conference?

By Mr. SONNETT:

Q. Did you respond to that letter, Captain?

A. Yes, I did.

277 Q. Captain, I show you Government Exhibit No. 20 and ask you if you can identify that document.

A. Government Exhibit 20 is a copy of a letter from the Coal Mines Administrator to Mr. John L. Lewis, President of the United Mine Workers of America, dated October 22, 1946, in which I made reply to Mr. Lewis' letter to the Secretary of the Interior of October 21, 1946.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. We have no objection.

278 By Mr. SONNETT:

Q. Will you read it, Captain, please?

A. "Mr. John L. Lewis, President, United Mine Workers of America, United Mine Workers Building, Washington 5, D. C.

"DEAR MR. LEWIS: The Secretary of the Interior has requested me to reply to your letter of October 21 addressed to him.

"I desire to reaffirm the position taken in my letter of yesterday prepared prior to the receipt by me of your letter to the Secretary, to the effect that the Coal Mines Administration has not taken any action which would constitute a breach of the Krug-Lewis Agreement.

"Those provisions of the District Agreements, carried forward by the Krug-Lewis Agreement, adequately provide for the settlement of disputes concerning the proper interpretation of the contract by the ultimate submission of these disputes to arbitration. The position of the Coal Mines Administration has always been that the grievance procedure, culminating in arbitration, is the proper medium for the settlement of disputes concerning the meaning of the contract.

"That your organization understood this position is evidenced by the fact that it initiated the proceedings resulting in the arbitrator's decision in Illinois concerning pro rata vacation payments to which you refer in your letter. At no time has this Administration refused the enforcement of arbitrators' decisions. Any delay with respect to the over-all effects of the arbitrator's decision in Illinois was caused largely by your illness. Moreover, we wish to correct your statement that this decision was rendered on August 6, 1946. It was actually rendered on August 31, 1946, and this office advised thereof by you by letter dated September 9, 1946.

"With respect to your statement that significant changes in Government wage policy have occurred, such changes, if any, provide no contractual basis requiring negotiations for a revision of the Krug-Lewis Agreement.

"Your reference to Section 15 of the National Bituminous Coal Wage Agreement of April 11, 1945, as a basis for requiring contract negotiations looking toward a revision of the existing Agreement is clearly unwarranted, for a number of reasons. No attempt is made to detail all these reasons; but, among them, is the obvious fact that the Krug-Lewis Agreement itself superseded Section 15 of the National Bituminous Coal Wage Agreement. The Krug-Lewis Agreement states that it covers for the period of Government possession the terms and conditions of employment in respect to all mines in Government possession. This statement of the Agreement's life is unqualified. The Krug-Lewis Agreement carries forward only those terms and provisions of past contracts which were not amended or supplemented by the Krug-Lewis Agreement. To now contend that the life of the Krug-Lewis Agreement was subject to the provisions of Section 15 of the 1945 Agreement is tantamount to contending that the Krug-Lewis Agreement could have been reopened the day after it was signed. Obviously, the unqualified statement of the May 29, 1946, document amends and eliminates the 1945 provisions which you cite.

"I am, therefore, unable to treat your letter of October 21, 1946, as a notice given pursuant to any existing contract provisions requiring a joint conference for the purpose of negotiating new arrangements affecting wages and other matters.

"The Administration considers that the Krug-Lewis Agreement is in full force and effect and calls upon the United Mine Workers of America, who have always prided themselves on fulfilling their contract obligations, to abide by the terms of that agreement.

"The Administration is ready, as it has been in the past, to meet with you to discuss matters affecting the operation of the bituminous

coal mines under the Krug-Lewis Agreement, and for that purpose, with the above reservation, any date for such discussions is agreeable to this Administration.

"It is suggested that any negotiating conferences looking toward a new agreement for the operation of the bituminous coal mines be had with the representatives of the owners of such mines. The Coal Mines Administration continues ready to lend its good offices to
281 promote such negotiating conferences, thereby continuing the negotiations which were temporarily recessed pending the Mine Workers convention early this month. Such an Agreement would accomplish the result which has been publicly expressed as the desire of the Coal Mines Administration, the United Mine Workers, and the operators, namely, the return of the mines to private operation.

"Very truly yours, N. H. Collisson, Captain, U. S. N. R., Coal Mines Administrator."

Q. I show you Government Exhibit 21, Government Exhibit 22, Government Exhibit 23, and Government Exhibit 24, and ask you, Captain, to state in general what those documents are.

A. Government Exhibit No. 21 is a copy of a telegram from the Secretary of the Interior at Amarillo, Texas, to Mr. John L. Lewis, President of the United Mine Workers, in which the Secretary points out that his existing tour will not permit him to meet on November 1 but that he will meet with the United Mine Workers at Tule Lake, California, at which location he would be on November 1.

Mr. SONNETT. I offer that in evidence, if the Court please.

Mr. HOPKINS. No objection.

(Government Exhibit 21 was received in evidence.)

By Mr. SONNETT:

Q. Will you read that in full, Captain?

282 A. "October 22, 1946, Amarillo, Texas. "John L. Lewis, President, United Mine Workers of America, United Mine Workers Building, Fifteenth and I Streets, Northwest, Washington, D. C.

"Today Captain Harvey Collisson, Coal Mines Administrator, wrote you giving our views on the Krug-Lewis Agreement and said that we would be agreeable to meet with you at any time if you desire to discuss provisions of the existing contract between the United Mine Workers and the United States Government. I understand that your preference is to meet about November 1, and I want to meet your wishes. On that date, I will be at Tule Lake, California, discussing our program for Veterans' Settlement but would find a way of arranging time for our meeting if you want to meet there. However, if it should better meet your convenience, I will see you in Washington directly after my last publicly announced address on November 6 to the Town Hall in Los Angeles which ends my committed western inspection trip. Will you please let my office know what arrangement will suit you best?

"J. A. Krug, Secretary of the Interior."

Q. Is Government Exhibit 22 the response to that from Mr. Lewis?

A. It is.

Mr. SONNETT. I offer that in evidence.

Mr. HOPKINS. May it be read?

Mr. SONNETT. I am going to ask that it be read.

283 Mr. HOPKINS. Very well.

By Mr. SONNETT:

Q. Will you read it, please, Captain?

A. Government Exhibit 22 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, dated October 22, 1946, addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

"Dear Mr. Secretary:

"This will reply to your telegram from Amarillo and Collisson's letter from Washington of October 22.

"The existing Krug-Lewis Agreement expressly provides that both parties to the Agreement are bound to meet within a 10-day period upon formal request of either party. Such formal request was filed yesterday by the United Mine Workers of America. Failure on your part to honor this meeting will constitute another breach of the contract and will void the Krug-Lewis Agreement.

"Yours truly, John L. Lewis, President."

Q. Referring to Government's Exhibits 23 and 24, Captain, will you state briefly what those are, so that we may offer them in evidence?

A. Government Exhibits 23 and 24—I presume they are numbered in sequence—then, No. 23 is a copy of a wire dated October 27, 1946, from Phoenix, Arizona, from J. A. Krug, Secretary of the

284 Interior, to Mr. John L. Lewis, President, United Mine Workers of America, Washington, D. C., which reads as follows:

"Replying to your letter of October 21, I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on November 1 or any other date agreeable to you.

"J. A. Krug, Secretary of the Interior."

Q. Read Government Exhibit 24, please.

A. Government Exhibit 24 is a copy of a wire from Mr. John L. Lewis to the Honorable J. A. Krug, Secretary of the Interior, dated October 28, 1946.

"I esteem your telegram 27th received by me today as compliance with request for official conference contained in my letter October 21. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, November 1. Under these conditions Krug-Lewis Agreement remains effective and unchanged during the ensuing period of negotiations.

"John L. Lewis."

Mr. SONNETT. I offer both of those in evidence.

Mr. HOPKINS. No objection.

(Government Exhibits 23 and 24 were received in evidence.)

By Mr. SONNETT:

Q. Now, Captain, beginning on or about November 1, 1946, did you have conferences with representatives of the United

285 Mine Workers of America?

A. Yes, I did.

Q. On what dates did you conduct such conferences?

A. I conducted such conferences on November 1, November 4, November 6, and November 7, 1946.

Q. Will you state who was representing or was in charge of the representatives representing the United Mine Workers of America at those conferences?

A. It was my understanding that Mr. O'Leary, Vice President, was representing the United Mine Workers.

Q. Now, Captain, will you to the best of your recollection, state in substance what transpired at the meetings which you have just mentioned?

A. At the meeting of November 1, 1946, I explained to Mr. O'Leary and his associates that this meeting had been requested by them; that I was ready and willing to listen to the matters they wanted to discuss.

There followed, then, a discussion as to my authority to negotiate. My answer to that was that, in accordance with the powers of the Executive Order, and with the limitation of the War Labor Disputes Act, with respect to entering a contract, I had full power to negotiate.

We then discussed over this period of days—and I am not clear just what happened on each day; I am clear as to the items we
286 discussed—we discussed a number of points coming up under the Krug-Lewis Agreement. We discussed powder charges; we discussed the 5-cent-per-ton payments to the 4–A fund, namely, whether that charge was made on railroad weights or on the so-called tipple weights; we discussed the Federal Mine Safety Code, and means of expediting action during this rather dangerous period of the year in the mines.

On at least two occasions—and I think on only two—there was a statement made by the United Mine Workers that their working hours were too long and that at the proper time they would make known those demands to me.

They also asked me if I were aware of the inadequacy of the 5-cents-per-ton—the 4–A fund of the Krug-Lewis Agreement—to carry forward and get for the miners the benefits they wanted under that fund.

They asked me if I was informed as to the administration and adequacy of other similar funds in other industries, and I informed them that I was not familiar with the adequacy or inadequacy as compared with those other funds, nor the administration of those other funds, but that I would make such information—I would get such information.

The gist of the meetings over those days was on the subjects that I have just mentioned. At no time was a direct demand or request made upon me with respect to changes in terms and conditions of em-
ployment, other than the two items that I have mentioned,
287 namely, that the men were working too long and, (2) information relative to the inadequacy of the health, welfare, and retirement fund.

On the final day, I told them that the meeting had been called at their request and that since we had gone through this time without any formal request for changes, I again wanted to bring it to their attention that that is what I was there for and that I was ready to listen to any point they cared to discuss.

On the first day—I think there is one other significant matter—directly after our discussions in the morning I asked them that before

they made any demand on me for wages or hours, I felt it only fair to again urge that they consider a recessing of that meeting with me in order to attend a meeting, which I would be glad to arrange, with the operators, so that the recessed meeting of September 13, called by Admiral Moreell, could be carried forward in an effort to settle that outstanding dispute or arrange a contract mutually agreeable to the operators and to the Union.

I told them that that meeting of September 13 had been recessed—had been recessed in order to permit Mr. Lewis to go to his convention, at his request, and take up a matter of policy with his membership. That had been done, and there had been no official answer, insofar as we were concerned, received since that date.

288 No. 2: The Union itself—and I quoted excerpts from a resolution coming from the Union—the Union itself in convention had urged that negotiations be resumed with the operators and branding the Government operation, as I recall it, a fake and a delusion.

I said that the operators, too, wanted their properties back and were ready and willing and had given me their assurance that they would meet at any date that was convenient and agreeable, and I urged that they accept such a meeting, which I would use my good offices to obtain and arrange, before they had told me their demands, in order that their bargaining position would remain unknown, and hence fair in their interests, in reaching such an agreement.

Their answer to me was no.

I repeated that on the final day of my chairmanship of the meetings, and their answer was still no.

Q. In the meantime, you had had how many meetings with them?

A. On the 1st, 4th, 6th, and 7th—four days' meetings.

Q. Was there at your early meeting a discussion of the question whether or not the conferences were being held pursuant to Section 15 of the Agreement of April 11, 1945?

A. Yes; there was.

Q. State what that was, please.

A. At the meeting of November 1, after the opening, in which they questioned or asked my authority to negotiate, they

289 immediately made clear their position in going forward with these meetings, namely, that it was under Section 15 and that, therefore, time was running out against me as per provisions of that section.

I told them that that was not the position of the Coal Mines Administration; that we were ready to listen to them, discuss and negotiate any matters upon which we could agree, coming under the Krug-Lewis Agreement.

I pointed out to them that they had a ready relief and remedy under section 5 of the Smith-Connally Act, to appeal to the Wage Stabilization Board for changes in that contract. But until I knew what those changes were, I was quite willing to sit and listen to them, and listen to them sincerely.

I further stated—I suggested that since it was obvious, after some discussion, that we could not agree on that point, that each party proceed without prejudice to his position with respect to a position on Section 15 of the Krug-Lewis—April 11, 1945, Agreement, I taking the position that the Krug-Lewis Agreement was for the term of Govern-

ment possession and operation, they taking the position that under Section 15 such conference was called in accordance with that, and the time limit thus imposed by that.

I understand that each side proceeded without any change in their positions.

290 Q. I show you Government's Exhibit No. 25, Captain, and ask you if you can identify that.

A. Government's Exhibit No. 25 is a copy of a letter from the United Mine Workers of America, signed by John L. Lewis, President, dated November 15, 1946, and addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

Mr. SONNETT. I offer it in evidence.

Mr. HOPKINS. Just a second. We may want to see it.

Mr. SONNETT. All right, I am sorry.

Mr. HOPKINS. Are you offering it in evidence, Mr. Sonnett?

Mr. SONNETT. I am, indeed.

(The document was handed to counsel.)

Mr. HOPKINS. To which there is no objection.

(Thereupon, Government's Exhibit No. 25 for identification was received in evidence.)

By Mr. SONNETT:

Q. Will you read that document, please, Captain?

A. Dated November 15, 1946, and addressed to the Honorable J. A. Krug, Secretary of the Interior, Washington, D. C.

"DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis Agreement dated May 29, 1946, the United Mine

291 Workers of America on October 21, 1946, officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.

"Fifteen days having now elapsed since the beginning of said conference, the United Mine Workers of America, exercising its option, hereby terminates said Krug-Lewis Agreement as of 12:00 o'clock, p. m., midnight, Wednesday, November 20, 1946.

"Yours truly,

"UNITED MINE WORKERS OF AMERICA,
"By JOHN L. LEWIS, *President*.

Q. Captain, to your knowledge did you or anybody else in the Coal Mines Administration release the text of that letter to the press, or otherwise release it publicly?

A. Not to the best of my knowledge.

Mr. SONNETT. You may inquire.

The COURT. The Court will take a five-minute recess.

(Thereupon, a brief, informal recess was had, after which the proceedings were resumed as follows:)

292 CROSS-EXAMINATION

By Mr. HOPKINS:

Q. Captain Collisson, as I understand you to testify on direct, in identifying and putting into the record certain Government exhibits, 16, 17, and 18, and particularly referring to them at the moment, that they were adjustments or interpretations of what is known as the

Krug-Lewis Agreement of May 29, 1946; Government's Exhibit 16 being the one in reference to the limited vacation in which the Mine Workers modified the existing vacation clause of the agreement. That is correct, sir, isn't it?

A. That is correct.

Q. Government's Exhibit 17 also was an interpretation of the existing Krug-Lewis Agreement pertaining to the custodian of the moneys to be paid in under Section 4 (a) of the Krug-Lewis Agreement. That is correct, sir, isn't it?

A. That is correct.

Q. Government's Exhibit No. 18, headed "Memorandum of Agreement" is in reference to the interpretation of the contract under Section 10 of the agreement in reference to the handling of fines or penalties which might be collected under the terms of Section 10 of the Krug-Lewis Agreement. That is correct, sir, isn't it?

A. That is my memory.

293 Q. All three documents were agreements reached after the negotiation of the Krug-Lewis Agreement of May 29, 1946?

A. That is correct.

Q. The date of Exhibit 16 being June 12, 1946; the date of Exhibit 17 being June 27, 1946; and the date of Government's Exhibit 18 being August 28, 1946: That is correct, sir, isn't it?

A. I don't remember dates, Mr. Hopkins, but I think——

Q. The exhibits being so dated you would not dispute them?

A. Not at all.

Q. On Government's Exhibit 16, after having modified the Krug-Lewis Agreement, did you, sir, or to your knowledge did the Secretary of the Interior, or the then Coal Mines Administrator, Admiral Moreell, submit that modification to the War Stabilization Board?

A. The Wage Stabilization Board?

Q. To the Wage Stabilization Board.

A. I believe a copy of it was sent to the Wage Stabilization Board.

Q. Did the Wage Stabilization Board to your knowledge issue any order either approving or disapproving that modification of the agreement?

A. If my memory is correct, Mr. Hopkins, they acknowledged receipt of it with no cause for action.

Q. Will your files have a copy of the communication that
294 transmitted this agreement to the Wage Stabilization Board, and their acknowledgement, about which you speak?

A. It would have, yes, if my memory is correct.

Q. Would you undertake to produce them if they are there?

A. Yes, I will get them.

Q. In reference to Government's Exhibit 17, dated June 27, that pertains to the interpretation of the Krug-Lewis Agreement in reference to Section 4 (a), was that submitted to the Wage Stabilization Board?

A. I am not clear as to whether it was or not.

Q. If it was would your files show a copy of the letter of transmittal and any reply, if any, from the Wage Stabilization Board?

A. They would.

Q. Would you undertake to produce those?

A. I will.

The COURT. Just so there will be no delay, you will produce them at 10 o'clock Monday morning?

Mr. HOPKINS. I mean next Monday, yes, sir. I understand that to be impossible from the standpoint of time.

The COURT. All right.

By Mr. HOPKINS:

Q. In reference to Exhibit 18, dated August 28, which has to
295 do with the interpretation of Section 10 of the Krug-Lewis agreement, was that submitted to the Wage Stabilization Board?

A. I am not clear that it was. I don't know that it was or that it wasn't, Mr. Hopkins, but again, I would be only too glad to look over the files and if it was the submission and the reply of the Wage Stabilization Board would be in my files.

Q. And you will be in position to testify on that point Monday morning?

A. I will, sir.

Q. In reference to Exhibit 16, dealing with the vacation, is it not a fact, Captain Collisson, that that modification of the agreement was arrived at and agreed to by Mr. Lewis, as president of the Mine Workers, at the request of the Coal Mines Administration?

A. That is correct.

Q. And the same thing is true as to Exhibit 17 in reference to the custodian pending the appointment of trustees: Is that not so, sir?

A. Yes, sir, it was at our request; the Coal Mines Administration's request.

Q. Very well. Captain, you have referred in your direct examination to various conferences that you and your associates held with the Mine Workers and their representatives between May 29,
296 the date of the agreement, and November 1 of this year.

May I not ask you if it is not true that in one of the conferences there was discussed an interpretation of the Krug-Lewis Agreement pertaining to fines that had been assessed, levied, and collected by various Government operators in the several districts: Is that not true, sir?

A. At at least one conference.

Q. And is it not true, sir, that you had made, or your Coal Mines Administration, had made certain rulings in reference to fines and had allowed them to be levied and collected in at least one instance, or more?

A. We had authorized, on application, certain fines.

Q. And is it not true that the Mine Workers, appearing in an attempt to construe the contract with you, objected to the levying of those fines?

A. Yes, sir, they did.

Q. And is it not true, Captain, that after the Mine Workers' objections and discussion as to the interpretation of the agreement, you authorized and directed the revocation of those fines?

A. No, I am not clear on that.

Q. In at least one instance? Is that not true, sir?

A. We revoked a lot of fines. I think we—I don't think, I know we—revoked many fines, but I don't remember the incident you are talking about.

297 Q. But it is true you did authorize the revocation and repayment by your operating managers of certain fines in certain instances that had been levied and collected?

A. That is correct, wherever the operating manager, we felt, had in any way participated in encouraging a walk-out we did revoke fines.

Q. That was the result of the Mine Workers disputing your right under the contract to have that done: Is that not correct, sir?

A. No, I don't recall that, Mr. Hopkins. I remember many conferences on those subjects.

Q. In which the Mine Workers were disputing the authenticity or the righteousness of those fines under the contract: Isn't that correct?

A. Now, my understanding—my memory of those conferences was that the United Mine Workers stated that fines to be authorized or not authorized by me should first have the approval of the United Mine Workers, and I said that that was not in the contract and I couldn't read it into the contract, and they said, "No, it is not in there but it was discussed when the Krug-Lewis Agreement was made."

I said, "Well, gentlemen, I will be glad to get your views on any of those, and we will let you know those in which, after investigation by us they appear justified, those cases where we do authorize the levying of the fines."

298 Q. In those instances, no matter how many there were, whether one or more, when you did make the ruling and later authorized the return of the money, did you submit that ruling to the Wage Stabilization Board for its approval?

A. No.

Q. Is it not true also, Captain Collisson, that certain disputes arose between the Coal Mines Administrator and the representative of the Mine Workers in reference to an attempt on the part of certain operators to raise the rental on company-owned houses?

A. That is correct.

Q. And isn't it true that after discussing with you that point in dispute that you made certain rulings in reference to house rent and sent out such rulings to your Government operating managers?

A. I wouldn't call them rulings. They were directives to my operating managers.

Q. Were those directives issued after the dispute had been ironed out between the representative of the Mine Workers and the Administrator? Were those directives submitted to the Wage Stabilization Board?

A. No.

Q. Is it not true, Captain Collisson, that also disputes arose as between the Mine Workers and the Coal Mines Administration

299 in reference to the prices being charged by your operating managers in the several companies for coal used by the mine workers themselves in their houses?

A. Coal sold by the companies to the mine workers?

Q. And used in their respective homes.

A. That is correct. I sent out directives, or instructions, to our operating managers.

Q. And those instructions, I ask you is it not a fact, were sent out after the dispute had been ironed out as between the representative of the Mine Workers and representatives of the Coal Mines Administration?

A. In the greater number of cases, yes.

Q. And were any of those directives before they were sent out submitted to the Wage Stabilization Board?

A. Not to the best of my knowledge.

Q. And isn't it true also, Captain Collisson, that certain disputes arose as between the Mine Workers and the Coal Mines Administrator, under the Krug-Lewis Agreement, as to the price that the companies were charging the mine workers for the powder that they used?

A. That is correct.

Q. And isn't it true that in those instances attempts were being made and were made to increase the price of powder to the mine workers?

A. That is right.

Q. And other explosives?

300 A. That is correct.

Q. And isn't it true that after the dispute as between the Mine Workers and representatives of the Coal Mines Administration was settled, that you sent certain directives to your various operating managers to settle that dispute?

A. That is correct.

Q. Were any of those directives, sir, submitted to the Wage Stabilization Board?

A. Not to the best of my knowledge.

Q. And isn't it true, Captain Collisson, that a rather major dispute arose in reference to what is called "Service Charge" or the charge made against the miners in what we call laying the coal on the carpet?

A. There was a dispute; I don't know whether it was major. These were all major disputes. There was such a dispute; yes.

Q. And isn't it true that lengthy conferences upon that dispute were had between the representatives of the Mine Workers, yourself, the then Coal Mines Administrator, Admiral Moreell, and others of your staff?

A. That is correct.

Q. And isn't it true, sir, that as a result of that dispute the Mine Workers objecting as they did, you wrote a letter that reversed your previous ruling upon that dispute?

A. In certain cases we did; yes.

301 Q. May I ask you again, sir, did you submit those letters or directives to the Wage Stabilization Board which settled that dispute?

A. No; we did not, not to the best of my knowledge and belief.

Q. Captain Collisson, there is a section of the Krug-Lewis Agreement, I believe, dealing with an interpretation of the vacation clause. Isn't it a fact, sir, that a very major dispute arose between the representatives of the Mine Workers and the Coal Mines Administration as to the interpretation of that vacation clause, as to pro rata payment?

A. That is correct, and that was major.

Q. And it is correct that that dispute was discussed, and the facts involved in it, both with you, Admiral Moreell and the Secretary of the Interior on numerous occasions?

A. That is correct.

Q. And isn't it a fact, sir, that you settled that dispute after what was known as the Illinois Arbitration Award of August 31, 1946, or

to put it this way: Isn't it true that the settlement you finally made was based upon an award made by an arbitrator in Illinois dated August 31, 1946?

A. That is correct. I am hesitating about the date.

Q. Approximately that.

A. But it appears to be about correct.

302 Q. Then during the month of August, and prior to that time, there was a dispute between the Mine Workers and the Coal Mines Administrator in reference to pro rata vacation payments: Isn't that true?

A. That is correct.

303 Q. During the months of July, August, and September, and it was still pending in September?

A. That is correct.

Q. It was still pending in October?

A. Well, for a portion of October, yes.

Q. And was pending on October 21 when the original notice was given to the Secretary of the Interior of the Mine Workers asking for the reopening of the Krug-Lewis Agreement?

A. It was not pending as of the time of our receiving of the letter.

Q. It was not resolved, sir, until you wrote your letter of October 21 after you had received the notice from the Mine Workers of the same date that we were reopening the contract?

A. No, but as the letter said, that letter was made, Mr. Hopkins, prior to our receipt of the letter addressed to Mr. Krug.

Q. Put it this way, then. It was not resolved—that dispute was not resolved until you wrote your letter of October 21?

A. That is correct.

Q. May I ask, sir, did you submit to the Wage Stabilization Board your letter of October 21?

A. That is correct; we did.

Q. You did?

304 A. Yes.

Q. Would you have a copy of that?

A. I will.

Q. And their reply?

A. I believe their reply also.

Q. Very well, sir.

Now, Captain Collisson, is it not true, sir, that on October 21 in reference to the adjudication of the vacation dispute, that you wrote a letter to Mr. Lewis?

A. That is correct.

Q. Do you have with you now, sir, a copy of that letter?

A. No; I do not, Mr. Hopkins.

Mr. HOPKINS. For the purposes of getting it into the record as of this time, if the Court please, and without having the original in front of us, to wit, the original letter written by Captain Collisson to Mr. Lewis, I will ask him to take a look at this copy that I now present him and ask him to read it over and see if it is a true and correct copy of his original letter.

(The document was handed to the witness.)

Mr. SONNETT. If the Court please, I think I have a certified copy of the letter to which counsel refers. If it is the same letter, I would be very happy to make it available to him.

Mr. HOPKINS. Thank you, sir. I will accept the same and be delighted to make use of it.

The WITNESS. I believe that is——

By Mr. HOPKINS:

Q. His answer is—make your answer for the record.

A. I believe that is a copy of the letter.

Mr. HOPKINS. Your Honor, Government counsel having been kind enough to furnish us a certified copy of the letter to which I refer, I should like to present it to the witness and ask him to read it into the record, it being pertinent at this time on further cross-examination.

The COURT. Yes.

Mr. HOPKINS. That will be Defendant's Exhibit No. 1, for identification.

(The document referred to was marked "Defendant's Exhibit No. 1 for identification.")

The WITNESS. Defendant's Exhibit No. 1 is a copy of a letter dated October 21, 1946, to Mr. John L. Lewis, President of the United Mine Workers of America, Washington, D. C.

"DEAR MR. LEWIS: Secretary Krug has requested that I write to you with respect to the position of the Coal Mines Administrator on two of the matters which were discussed with you at your
306 meeting with him Saturday, October 19; namely, the pro rata retroactive vacation pay and measurements of tonnage to which 5¢ per ton for the Welfare and Retirement Fund is being applied.

"Although we believe that the position heretofore taken by this Administration with respect to the application of the pro rata vacation clause represented a reasonable and proper interpretation of the May 29, 1946, Agreement, it has been concluded that, cases having proceeded to the arbitrator in the Illinois District in accordance with the grievance procedure provided for in the District Agreement, the arbitrator's decision is final and binding upon the parties to the contract in accordance with its terms. Accordingly, I am advising the Illinois coal operators forthwith to comply with, and abide by, such decision.

"Inasmuch as cases which might arise in other districts would involve only interpretation of the same clauses as those involved in the Illinois District cases and would present identical issues, I am accepting the Illinois decisions as controlling precedents and issuing the necessary order to the operators of mines in Government possession in all districts to comply with the interpretation found by
307 the arbitrator in the Illinois cases.

"With respect to the weights to be used in determining payment of the 5¢ per ton required by Section 4 (a) of the Agreement, I wish to inform you that the position of this Administration is that which has been consistently taken during the negotiation of the contract and since its execution; namely, the 5¢ is payable with respect to salable or usable coal produced and is not payable with respect to impurities or foreign substances which may be mined along with the coal but which are eliminated by cleaning or other processing before sale. The Administrator's Order CMAN-8 clearly requires weights to be determined 'at the mine.' It is, therefore, not intended to permit any loss to the fund which occurs through shrinkage of salable coal between the tipple and distant railroad scales, theft, or other loss of salable or usable coal which are not reflected in railroad weights. Op-

erators who are not reporting and paying in accordance with this interpretation will be required to do so when any deviations are brought to our attention. This Administration is not willing, however, to accept tipple weights or other mine weights which ad-
308 mittedly include varying, and at times substantial, percentages of impurities and foreign substances which are removed from the coal before it is considered salable. Cleanings, dust, and other coal products which result from processing the run of mine coal and which are sold as coal should also be treated as coal produced for the purposes of the 5¢ per ton payments.

"Although the underlying contract structure consisting of the district agreements provides machinery for the disposition of any disputes arising under the contract, and this machinery is believed available for disposition of any differences over the meaning of the provisions of the Welfare and Retirement Fund clauses in view of the fact that the differences between the Coal Mines Administration and the United Mine Workers are in general common to all mines in Government possession and control, this Administration is agreeable to the appointment of a mutually satisfactory umpire—preferably an outstanding jurist—to whom this dispute may be submitted for a determination to be applicable to all mines subject to the Agreement.

"It is regretted that the final position of this Administration
309 in these matters, particularly that dealing with the decisions of the arbitrator in Illinois, was delayed through circumstances beyond the control of either party pending the meeting between you and the Secretary, which was finally held on Saturday.

"The Coal Mines Administration wishes emphatically to reaffirm its position that at no time has it been in intentional violation of the Agreement of May 29, 1946, and that its interpretations of the Agreement have always been discussed with your representatives before being promulgated, and when promulgated over the objection of your representatives were only intended to serve as controlling guides to the operators—the grievance procedure for the settlement of disputes under the contract at all times having been open to the mine workers when they disagreed with the position taken by this Administration.

"Very truly yours,

"N. H. COLLISSON,
"Captain, USNR."

By Mr. HOPKINS:

Q. Captain Collisson, in that letter you adverted at least to
310 the matter of the difficulty of weighing the coal for the Health and Welfare Fund as set up under Section 4 (a) of the Krug-Lewis Agreement. I ask you, sir, has that not been a matter of major dispute as between representatives of the Mine Workers and the Coal Mines Administrator, both during the time you were Deputy Administrator and since that time since you have been the Administrator?

A. That is correct.

Q. And that dispute, sir, was outstanding and unresolved as of October 21, the date the ten-day notice was given to the Secretary of the Interior, is that not true, sir?

A. That is correct.

Q. And it is outstanding and unresolved today, is it not sir?

A. That is correct.

Q. And was a matter that was discussed with you and with your predecessor on many, many occasions, and with the Secretary of the Interior; is that not true, sir?

A. On numerous occasions. That is right.

Q. Captain Collisson, I understand that the Coal Mines Administration issued immediately after seizure on May 21, what was known as regulations or revised regulations for the operation of coal mines under Government control.

That is correct, sir, isn't?

311 A. Yes. I am not clear as to the date, but I would say it was shortly after——

Q. If the effective date proves it to be 12:01 A. M., July 8, 1946, you would not dispute that being the effective date of it?

A. I would not dispute it, no.

Q. Nor the fact that they were promulgated and put into effect and have been observed during the entire administration of the mines?

A. That is correct.

Q. Now, addressing my question to Section 5 of those revised rules and regulations, and I read from a copy submitted to me by the Coal Mines Administrator in due course of operation of the mines, I ask you this question:

312 Is it not true that those regulations provided in Section 5, among other things, that "the existing organization of the mining company will be utilized and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue."

Would you contest that rule or wording under Section 5 of the regulations?

A. Well, my memory is not good enough to confirm it, Mr. Hopkins, but it is not good enough to dispute it at all. If I might——

Q. Well, now——

The COURT. Just a minute.

The WITNESS. If I might refresh my memory——

The COURT. What did you say?

The WITNESS. Your Honor, if I might refresh my memory, I would be glad to pass upon it.

By Mr. HOPKINS:

Q. That, in general, however, sir, subject to your verification of the actual wording that I read, was the general program under which the Government operated?

A. That is correct, sir.

Q. And is it not true, sir, from the same Section 5, headed "Plan and Policy of Operations," is it not true that the Government operated in this fashion, and I again quote from the rule, "All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof."

313

That was the way the Government operated, did it not?

A. That is correct, subject to the same reservations that I answered your other question.

Q. Yes. And is it not further true that under that same rule, that the "the Government having temporarily taken possession or custody will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production."

What is the general rule under which you operated, was it not, sir?

A. Subject to the same reservations, it is, Mr. Hopkins.

Q. And I take it that if there is any change or modification that you would want to suggest in reference to this rule, you would be prepared Monday morning to bring a copy of the rules into court?

A. That is correct.

Q. And is it not true, Captain Collisson, that under Section 40 of the same rules and regulations, the Government operated under this provision as set out by the rules:

"None of the provisions of this section and no action that shall be taken pursuant to any of them, shall be deemed to constitute acquiescence of the Administrator in any claim that operations during the period of Government possession and control were for the financial account of the Government."

What is substantially true, is it not, sir?

A. What is correct, subject to the same reservation.

The Court. What reservation do you mean, sir?

The Witness. That I am not familiar, Your Honor, enough with the wording of that particular regulation to identify it.

The Court. I see.

Mr. Sonnett. It may, if the Court please, refresh the witness' recollection if I could show him a copy of these extensive regulations to which counsel refers.

I think he is talking about Section 4 of these regulations.

Mr. Hopkins. I would be delighted for him to have a copy of them in front of him at the time the query is made.

(The document was handed to the witness by Mr. Sonnett.)

By Mr. Hopkins:

Q. Now, Section 40, I believe, bears the title "Method of termination" under subsection "Termination of Government Control."

What is correct, is it not, on page 15, of your revised regulations?

A. That is correct.

Q. Now, may I ask you in connection with the previous question whether or not any profits have been made by the Government of the United States——

The Court. Any what, sir?

Mr. Hopkins. Any profits.

By Mr. Hopkins:

Q. Have been made by the Government of the United States or the Coal Mines Administration in the operation of these mines under Government seizure?

A. No.

Q. Is it not true, Captain Collisson, that all mines are being operated for private account?

A. Private account and risk.

Q. Is there to your knowledge any mine in Government possession today that is being operated for Government account?

A. None to my knowledge.

Q. And there has been none at any time since May 29?

A. Not to my knowledge.

Q. Now, turning to Section 23 (d) of the same revised rules and regulations, appearing on pages 6 and 7, particularly referring to subsection (d) on page 7, and reading from the last paragraph of subsection (d) on page 7:

316 "Nothing in these regulations shall be construed as recognizing such"—strike that, please.

Is it not true that the last paragraph under subsection (d) reads as follows:

"All personnel of the mines, both officers and employees, shall be called upon by Executive Order No. 9728 to serve the Government of the United States, but nothing in these regulations shall be construed as recognizing such personnel as officers and employees of the Federal Government within the meaning of the statutes relating to Federal employment."

Is that a correct quotation, sir?

A. With a minor change. Mine reads "shall be considered as called upon by the Executive Order" in the first sentence, Mr. Hopkins.

"Shall be considered as called upon."

Is that the way yours is?

You said, "shall be called upon."

Mr. HOPKINS. "Shall be considered" is the wording.

The WITNESS. Okay, then, that is a correct reading of that section.

By Mr. HOPKINS:

Q. Now, that is the way in which the Government operates and has operated all these mines?

A. That is correct.

317 Q. Since Government possession?

A. That is correct.

Q. The Coal Mines Administrator has never at any time looked upon the employees of the coal mining companies digging the coal as employees of the Coal Mines Administrator?

A. No, that is correct.

Q. The Coal Mines Administrator has not undertaken to furnish any workmen's compensation to any of these employees, have they?

A. No. We have directed that the operating managers furnish it, but not as a——

Q. And who pays the premiums for such coverage?

A. If they are paid, they are paid by the operating managers.

Q. And are not a charge against the Government, the premium?

A. Unless they were to make a claim against the Government, Mr. Hopkins.

Q. There have been no monies paid by the Government as yet for such premium?

A. No.

Q. Now, may I ask, has the Government paid out any monies for wages to these men since the seizure on May 21 under the Krug-Lewis Agreement of May 29?

A. No.

318 Q. Has the Government recognized, or has the Coal Mines Administrator recognized, any financial responsibility on the part of the Government to pay such wages?

A. No.

Q. Now, Captain Collisson, addressing yourself to the same page 7, under Section 24, title "Application of Federal and State Law" and reading from the last sentence of the first paragraph, does it not say:

"The companies are expected to meet all Federal, State and local taxes, contributions and assessments in the customary manner."

A. That is correct.

Q. Has the Government of the United States or the Coal Mines Administrator paid any taxes of any character since the possession of the mines was taken?

A. They have not.

Q. To any state, municipal or other taxing authority of the Government?

A. Not to the best of my knowledge.

Q. Now, may I ask you, sir, during your administration as Deputy Coal Mines Administrator and since your incumbency as the Administrator, has the Government of the United States undertaken to waive any Federal taxes due by any of the operating companies or properties under your seizure?

A. Not to the best of my knowledge.

319 Q. They have not?

A. They have not.

Q. Reading further from subsection—from the second paragraph of Section 24 on page 7:

"The mining companies are deemed to remain subject to suit as heretofore."

That is a correct excerpt from your existing regulations, is it not?

A. That is correct.

Q. To your knowledge, has the Government of the United States allowed itself to be sued or accepted service in any suit growing out of the operation of these mines under Government possession?

A. I am not clear on that point, Mr. Hopkins. We have received notices which would indicate that the company reserves its right to make claims against the Government.

Q. Yes. I speak of legal action, as such.

A. I know of no legal action, Mr. Hopkins, but it is a legal point that I am not qualified to speak on.

Q. Yes. That is the regulation and it has not been amended on that point?

A. No. You read the regulation correctly.

Q. Has the Government assumed, to your knowledge, the loss that has occurred from the operation of any mine under Government possession since May 29?

320 A. Not to my knowledge.

Q. If it had you would have known about it, would you not, sir?

A. I would.

Mr. SONNETT. What is your answer?

The WITNESS. I would.

By Mr. HOPKINS:

Q. Now, going back momentarily to the dispute which I believe you agreed with me was outstanding and unresolved from during June, July, August, September, and October, up to October 21, to wit, the manner of weighing the coal for the purposes of the Health and Welfare Fund, is it not a fact, sir, that that dispute grows out of the

interpretation of the wording in Section 4 (a), to wit; the words "produced for use or for sale"?

Mr. SONNETT. If the Court please, I think that counsel is asking the witness for a legal conclusion at this time.

The COURT. Ask the question over again, please. I want to hear it.

By Mr. HOPKINS:

Q. Is it not a fact, sir, that the dispute in reference to the weighing of the coal for the purposes of the Welfare Fund under Section 4 (a) stems out of a dispute between the Coal Mines Administrator and the mine workers as to the meaning of the words "produced for use or for sale"?

321 The COURT. The Court thinks that the witness ought to answer the question if he is able to.

Mr. HOPKINS. I think he is competent to answer it, Your Honor.

The WITNESS. I would be glad to answer it, Your Honor.

The COURT. Proceed.

The WITNESS. It does.

By Mr. HOPKINS:

Q. And that dispute involving that interpretation in wording of the contract has been long standing, has it not, Captain?

A. It has.

Q. And it is still outstanding and unresolved?

A. That is correct.

Q. And was as of the date of October 21, the date that the Secretary and yourself received notice of the reopening of this contract?

A. That is correct.

Q. Now, Captain, you adverted to certain meetings held by you and your associate from November 1 up to and including November 7 of this year with representatives of the United Mine Workers.

I should like to ask you, sir, was the Secretary of the Interior present on November 1?

A. He was not.

322 Q. Was he present on November 4?

A. He was not.

Q. Was he present on November 6?

A. He was not.

Q. Was he present on November 7?

A. He was not.

Q. He, I believe, in your testimony on direct, wired Mr. Lewis on or about October 22 that he would be out in Tule Lake, California, on November 1, the date sought for the meeting, and he also adverted to the fact that he could not be present until after November the 6th. After November the 6th, did he return to the city?

A. Meaning Washington?

Q. Yes.

A. Yes, sir, he did.

Q. But prior to that time is it not true, Captain Collisson, according to your own knowledge, that a wire was sent by Mr. Lewis to Secretary Krug, a copy of which was delivered to you, I believe, on October 28, that you adverted to indirect, in which it was said that "I esteem your telegram"—meaning the telegram that the Secretary

had sent to Mr. Lewis on the preceding day—"received by me today as a compliance with the request for official conference contained in my letter of October 21."

323 "Under these conditions the Krug-Lewis Agreement remains effective and unchanged during ensuing period of negotiation."

You were aware of that telegram at the time you met representatives of the Mine Workers on November 1, were you not?

A. I was.

Q. It is a fact, Captain, as a coincidence, that I was present during all those conferences, according to your recollection?

A. I believe you were, Mr. Hopkins; each meeting.

Q. And is it not correct, Captain Collisson, that a representative or representatives of the Mine Workers, upon initial meeting with you, sir, on November 1, stated clearly for the record that they were there in response—that they were there in response to their notice previously given to the Secretary of the Interior of October 21, to wit, for the purposes of renegotiating a new contract. That is correct, isn't it?

A. That is correct.

Q. And that was ofttimes repeated to you and your associates?

A. Many times during the conferences.

Q. Was there at any time an admission on the part or an inference, as you recall, on the part of the representatives of the Mine Workers that they did not stand upon their contractual right as set out

324 in Section 15 of the old agreement?

A. There is no inference noticed by me.

Q. Captain Collisson, when did Secretary of the Interior Krug first, according to your knowledge, meet with representatives of the Mine Workers subsequent to November 1? Was it not, sir, to refresh your memory, on November 11?

A. Oh, subsequent to. Excuse me. Yes, November 11.

Q. And you were present at that time?

A. I was present, yes.

Q. How long did that conference continue? How much time was consumed in it?

A. On November 11?

Q. Yes, sir.

A. I would say maybe an hour or an hour and a half. I am not clear, Mr. Hopkins.

325 Q. Is it not a fact that at that time definitive suggestions for new provisions in the contract were submitted by representatives of the mine workers in your presence?

Mr. SONNETT. If the Court please, I object to that question as being beyond the scope of the direct examination. Counsel is now making the Captain his witness. If he is content to do so, I am content.

The COURT. How is that, sir? You object to it on the ground that it is not cross-examination?

Mr. SONNETT. On the ground that it is beyond the scope of the direct examination. The Government elicited no testimony from this witness concerning any meeting which he attended after November 7, 1946. Counsel is now directing his inquiry to meetings of November 11 and thereafter.

Mr. HOPKINS. We submit that it is proper cross-examination.

The COURT. The Court overrules the objection. Proceed.

By Mr. HOPKINS:

Q. That meeting on November 11, being the first, as I understand you to testify, that the Secretary of the Interior had attended, lasted for about an hour or an hour and a half?

A. That is my recollection.

Q. Is it not true also that at the same meeting, when you were present, definitive suggestions as to terms and conditions, hours and wages, and matters of employment were presented by repre-
326 sentatives of the mine workers to the Coal Mines Administrator?

A. That is correct.

Q. Is it not correct, sir, that that meeting on that evening recessed for the purpose, or one of the purposes, of allowing the Coal Mines Administrator to consider the merits or demerits of those proposals?

A. That is correct.

Q. And that they were considered by the Secretary of the Interior, yourself, and your associates, and the Coal Mines Administrator, that night and the following morning?

A. I don't recall that night, but certainly the following morning.

Q. Is it not true, sir, that you requested an extended recess of that conference beyond the hour that had originally been set for it to convene on November 12?

A. No; I think the Secretary of the Interior made the request.

Q. How long did the meeting last, then, when it reconvened on November 12?

A. It is my recollection that it convened at around 2 o'clock in the afternoon, and I would say recessed within an hour and a half again. That is my estimate.

Q. Was that the last group meeting between the Secretary of the Interior and yourself and your representatives, and the mine workers?

327 A. That is correct. Between those parties mentioned, that was the last time.

Q. As a matter of fact, that did not last more than 15 minutes, did it, Captain?

A. I thought it lasted longer, Mr. Hopkins, but it is an estimate on my part.

Q. To refresh your recollection, isn't that the one which was recessed by the representatives of the mine workers, saying in substance "If that is your position, then we have no further reply to make"?

A. That is correct, but I would have thought it lasted longer than that.

The COURT. That what was your position? What do you refer to?

Mr. HOPKINS. The duration of the meeting of November 12, attended by the witness, the Secretary of the Interior, and representatives of the mine workers, to discuss the questions involved in the making of a new contract involving wages, hours, and working conditions. I want to develop the time that was involved or contained in those meetings.

The COURT. You asked if the representatives of the mine workers had not said to the Secretary of the Interior, "That is your position? If that is your position, we have no more to say," or words to that effect?

Mr. HOPKINS. I think it was upon that note that the
328 meeting adjourned.

The COURT. What did he mean by, "If that is your position?" What are you referring to?

Mr. HOPKINS. Well, I do not want to undertake to be a witness myself, your Honor, but to refresh the witness' recollection——

The COURT. Ask him.

By Mr. HOPKINS:

Q. When the meeting reconvened on November 12, is it not your recollection, sir, that the Secretary of the Interior came in with certain counterproposals to those that had been previously submitted by the Mine Workers?

A. That is correct.

Q. And those proposals to settle the disputes that were existing were unacceptable to the mine workers in that meeting of November 12?

The COURT. That clarifies it.

The WITNESS. They so said that they were not acceptable.

By Mr. HOPKINS:

Q. Again, I refresh your recollection: Didn't that meeting last less than 30 minutes, and probably more nearly 15?

A. It may have, Mr. Hopkins.

Q. Were there any other meetings, Captain, that you at-
329 tended, after November 12, between the representatives of the Mine Workers and the representatives of the Coal Mines Administration?

A. None after that last meeting.

Q. On November 12——

A. (The witness nodded his head.)

Mr. HOPKINS. Pardon me. will you indulge us momentarily?

(Mr. Hopkins conferred with associate counsel.)

By Mr. HOPKINS:

Q. You adverted in your direct examination, Captain, to certain meetings of September 12 or 13, or thereabouts, of this year between the Mine Workers' representatives and the representatives of the private operators or the private owners. What were the exact dates, if you recall?

A. My memory indicates they were September 11 and 13.

Q. The two meetings were on the respective dates of the 11th and 13th, with a day's interval between, in which there was no meeting?

A. That is to the best of my recollection.

Q. Who called that conference or meeting?

A. The Coal Mines Administrator, Admiral Ben Morcell.

Q. It was at his invitation, in his capacity as Coal Mines Administrator, that such meeting was convened between representatives of the operators and of the miners?

A. That is right.

Q. Where was it held?

330 A. In the Secretary's conference room in the Interior Department.

Q. Do you recall, sir, or put it this way: Is it not correct that when that meeting convened, Admiral Moreell in his role and in his official capacity as Coal Mines Administrator made certain precise

proposals to the operators for settlement of the dispute existing between them and the mine workers?

A. Well, I think he made certain precise proposals to both parties assembled, not just to the operators.

Q. To the operators and the miners to settle the dispute that existed between them?

A. That is correct—suggestions.

Q. That was on September 11, the first day of the meeting?

A. That is correct.

331 Q. Refreshing your recollection, for I believe I was again present at that meeting, and so were you, after some discussion, was it not recessed for the purpose of allowing the operators to make certain examination of the proposals submitted by the then Coal Mines Administrator to settle and resolve the dispute? Isn't that correct, sir?

A. That is correct.

Q. Is it not true, sir, again refreshing your recollection, that the operators on the following morning requested the Admiral and the mine workers to postpone a reconvening of that conference until they could further look into the merits or the demerits of the proposals as made by Admiral Morrell to settle this labor dispute?

A. That is correct. On the morning of the 12th, which was the next day after the original meeting, they made such a request.

Q. And they reconvened on the 13th, did they not, Admiral?

A. That is correct.

Q. Is it not correct that at that time the operators replied in two parts, one part being an answer which came from the so-called northern group, and the other part coming from the so-called southern group? Isn't that correct, sir?

A. That is correct; their positions were not the same.

Q. Is it not correct that Mr. Charles O'Neill, speaking
332 for the northern operators, presented a paper outlining his reactions to the proposals to settle that labor dispute?

A. That is correct.

Q. Is it not true also that former Senator Burke of Nebraska, or formerly of Nebraska, speaking for the so-called southern group——

The COURT. Senator Burke, you say?

Mr. HOPKINS. Burke—former Senator Burke.

By Mr. HOPKINS:

Q. (Continuing) presented a paper or statement in which he set out the views of the southern coal operators, that were calculated to resolve, in reference to the proposals as submitted by Admiral Morrell—to resolve this labor dispute? That is correct, is it not?

A. That is correct.

Q. It is correct, is it not, sir, that in the major points involved, Senator Burke's group differed, and differed diametrically, from the position as announced by Mr. O'Neill in behalf of the northern operators?

A. My memory indicates that Senator Burke's proposal differed on three major points with those of the northern operators as represented by Mr. O'Neill.

Q. Very good, sir, is it not true in substance, then, that thereafter Admiral Moreell, the caller of this meeting and the presiding
333 officer at that time, suggested that he did not want that conference to be adjourned; that he wanted it to be recessed? That is correct, isn't it?

A. That is correct.

Q. Was it not his stated purpose, as you recall it, in so requesting that it be recessed rather than adjourned, that he wanted to hold it open in order that his proposal to settle that labor dispute might be further considered at a later date?

A. Yes; I think, however, the real reason for the recess was the request of Mr. Lewis, namely, that such a split, if that is understandable, in the proposals submitted by the two factions of the operators constituted a policy matter that he, Mr. Lewis, would have to get the instructions on from his membership, they convening shortly thereafter in national convention in Atlantic City. I believe it was for that purpose, Mr. Hopkins, that the meeting was recessed.

The Court. We will suspend at this point. It is understood that the Captain will bring with him on Monday morning the exhibits which you have requested, so that there will be no delay at that time.

The Witness. Yes, sir.

(At 5:03 p. m. an adjournment was taken until Monday, December 2, 1946, at 10 a. m.)

334 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

United States of America, plaintiff,

vs.

United Mine Workers of America, an Unincorporated Association, and John L. Lewis, Individually and as President of the United Mine Workers of America, defendants.

Washington, D. C., *December 2, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. Alan Goldsborough, Associate Justice, at 10:00 o'clock a. m.

Appearances:

On behalf of the Government: John F. Sonnett, Assistant Attorney General; John Ford Baecher, Special Assistant to the Attorney General; Joseph M. Friedman, Special Assistant to the Attorney General; J. Francis Hayden, Special Assistant to the Attorney
335 General; Robert L. Werner, Special Assistant to the Attorney General; George Morris Fay, United States Attorney, District of Columbia.

On behalf of the Defendants: Welly K. Hopkins, 900 15th Street NW.; Edmund Burke, Springfield, Illinois; T. C. Townsend, Charles-

ton; West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

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PROCEEDINGS

Mr. SONNETT. If the Court please, the Court will recall that at all times it has been the Government's position in this matter that every opportunity should be furnished to the defendants to present fully any defense which they think they may have.

For this reason I advise counsel for the defendants prior to the commencement of the hearing on Friday, November 29, 1946, that the Government's first witness would be Captain Collisson.

The Government now desires to inform the Court and the defendants that it is presently the intention of the Government to call as its remaining witnesses the following: I have them listed, and will submit a copy of the list to the Court and read the names.

Captain N. H. Collisson, U. S. N. R., Coal Mines Administrator, Department of the Interior.

Mr. Alfred Oeth, Paramount News, Washington, D. C.

Mr. Joseph A. Genau, Special Agent, FBI.

Lt. Commander Hamilton Acheson, Coal Mines Administrator, Iowa Subarea Office.

Lt. Commander R. H. Behnke, Coal Mines Administrator, Fairmont, West Virginia, Area 1.

337 Mr. Briggs M. Rogers, General Superintendent, DeBardeleben Coal Corporation, Sipsey, Alabama.

Lt. Ralph N. Ciaiola, Coal Mines Administration Representative, Subarea Office, Uniontown, Pennsylvania.

Dr. Glenn L. Parker, Chief, Prices and Markets Subsection, Coal Economics Division, Bureau of Mines, Department of the interior.

Dr. Philip Hauser, Assistant to the Secretary of Commerce.

Mr. George Haas, Director of Research and Statistics, Treasury Department.

Secretary of the Interior Krug.

Mr. HOPKINS. Are you ready for us to proceed, Your Honor?

The COURT. Yes, proceed.

Thereupon—

Captain N. H. COLLISSON resumed the stand and testified further as follows:

CROSS-EXAMINATION—resumed

By Mr. HOPKINS:

Q. Captain Collisson, I believe when Court recessed on Friday evening last, defense counsel had asked some questions in reference to Government's Exhibits 16, 17, and 18, together with whether or
338 not there had been any correspondence as between the Coal Mines Administration and the War Stabilization Board in reference to those three exhibits. You were to look through your files and see.

Have you this morning found any communications from Coal Mines Administration to the War Stabilization Board or any reply thereto in reference to Government's Exhibit 16?

A. I have correspondence relative to those three exhibits. Mr. Hopkins. I do not recall the numbers of the exhibits, so if——

Q. Exhibit 16, I believe, dealt with the matter of modifying the vacation period.

A. That is the Fourth of July vacation period?

Q. Yes, sir; the Government's Exhibit No. 16 being dated June 12, 1946, a memorandum of agreement between the Coal Mines Administrator and the Mine Workers affecting modification of Clause 7 of the National Bituminous Coal Wage Agreement.

Do you have correspondence either to or from the Wage Stabilization Board in reference to that?

A. There is no correspondence with reference to Government Exhibit 16 for the reason that a paragraph in the Wage Stabilization Board's order approving the Krug-Lewis Agreement carries forward the statement that whether or not the men worked the ten days
339 or elected to work a shorter time than those ten days, is of no concern to the Board. That Wage Stabilization Board order is already an exhibit.

Q. Now, I understand the memorandum of June 12, to wit, Government's Exhibit 16, which is a modification of Clause 7 of the National Wage Agreement, was not submitted to the Wage Stabilization Board after its execution on June 12?

A. It was not.

Q. With reference to Government's Exhibit 17, having to do with Section 4 (a) of the Krug-Lewis Agreement, to wit, the Welfare and Retirement Fund and the appointment of a custodian thereunder,

I believe you stated on yesterday that there may have been correspondence between the Coal Mines Administration and the Wage Stabilization Board in reference to that exhibit.

Do you find any, sir?

A. I do.

Mr. HOPKINS. May I see them, please?

You can just hand them down through the Clerk.

(Thereupon, the documents were handed to Mr. Hopkins.)

Mr. HOPKINS. If the Court please, may we have a moment to see just what the character of the documents are?

The COURT. Certainly.

340 Mr. HOPKINS. If the Court please, the witness has presented to defense counsel copies of three communications: One dated June 27, 1946, addressed to the Vice Chairman of the Wage Stabilization Board, signed by Admiral Ben Moreell; a copy of a communication dated July 1, 1946, to Mr. William Wirtz, chairman of the Wage Stabilization Board, from Mr. Randall Compton, General Counsel, Coal Mines Administration; and a copy of a letter addressed to Admiral Ben Moreell, dated July 3, 1946, from Mr. Garman, Vice Chairman of the Wage Stabilization Board.

They appear to pertain to the Government exhibit under question, to wit, Government Exhibit No. 17. They indicate upon their face that on June 27 the Admiral communicated to the Board the execution of this memorandum of June 27, and on July 1 again indicated the same thing to the chairman through the Admiral's counsel, Mr. Compton, and the Board's reply.

We think that they are in response to the request that defense counsel made of the witness on Friday, and offer them as Defendants' Exhibits 2, 3, and 4. We submit them to Government counsel, if they desire them. I suppose they are familiar with them.

Mr. SONNETT. I have not seen them, if the Court please, but I join in the offer.

Mr. HOPKINS. Then, we offer them in the record.

341 (Defendants' Exhibits 2, 3, and 4, above described, were received in evidence.)

By Mr. HOPKINS:

Q. In reference, Captain Collisson, to Government Exhibit 18, was there any correspondence between the Coal Mines Administration and the Board in reference to that document?

A. Government Exhibit 18, as I recall it, had to do with the appointment of a custodian in lieu of trustees for the 4–B Fund, is that correct?

Q. This is in reference to section 4–B of the Krug-Lewis Agreement; that is correct, sir; in reference to the fines and penalties that were referred to in section 10 of the Krug-Lewis Agreement.

A. No; there is no correspondence, no application, or no answer from the Wage Stabilization Board on that point. The trustees for that fund—the 4–B Fund—were, in accordance with the Krug-Lewis Agreement, to be selected by the United Mine Workers. There was no concurrence nor any approval required from the United States Government, and therefore we felt that that was not a change in terms and conditions of employment but something that was entirely within

the rights of the United Mine Workers if they elected to have a trustee in lieu of or a custodian in lieu of a trustee.

Q. Then, it is correct to say, Captain, that that memorandum
342 Government's Exhibit 18, dealing with section 4–B and section 10 of the Krug-Lewis Agreement, for the reasons you have stated, was not submitted to the Wage Stabilization Board?

A. That is correct.

Q. I believe I made inquiry of you also in reference to the matter of the pro rata vacation payment dispute that had existed between the Coal Mines Administrator and the mine workers, which you resolved, as I recall under your testimony, by your letter of October 21, 1946, addressed to the mine workers. In reference to that, sir, I believe the question was asked whether you had submitted it to the Wage Stabilization Board. Do you have any communication bearing upon it?

A. I believe I answered, Mr. Hopkins, that I knew that one we had submitted, and I do have communications from the Coal Mines Administration to the Board and the Board's answer.

Q. May I see them, please?

(The witness handed papers to Mr. Hopkins.)

343 Mr. HOPKINS. If the Court please, the witness has presented to defendants' counsel copy of communication dated October 22, 1946, addressed to the Chairman of the Wage Stabilization Board, and signed by the witness in his capacity as Coal Mines Administrator, bearing upon the letter of October 21 previously alluded to by the witness as having been written by him to the defendant Lewis and the Mine Workers.

We were likewise presented with a copy of reply from the Wage Stabilization Board to the witness, Captain Collisson, under date October 30, 1946, signed by W. Willard Wirtz, Chairman of the Board.

We propose to offer them in evidence and submit them to Government counsel. I believe they would be Defendants' Exhibits 5 and 6.

Mr. SONNETT. The Government joins in the offer, if the Court please.

Mr. HOPKINS. Would you hand them to the witness, please?

(Defendants' Exhibits 5 and 6 handed to the witness.)

By Mr. HOPKINS:

Q. Captain Collisson, would you for the record read the two letters in chronological order into the record?

344 (Copy of letter dated October 22, 1946, from Captain Collisson to Willard Wirtz, Chairman, National Wage Stabilization Board, marked "Defendants' Exhibit No. 5" and received in evidence.)

(Copy of letter dated October 30, 1946, from W. Willard Wirtz to Captain Collisson, marked "Defendants' Exhibit No. 6," and received in evidence.)

A. Defendants' Exhibit No. 5 is a copy of a letter from the Coal Mines Administrator dated October 22, 1946, to Hon. Willard Wirtz, Chairman, National Wage Stabilization Board, Washington, D. C., and it reads:

"MY DEAR MR. WIRTZ: By your Board's order of May 31, 1946, certain changes in terms and conditions of employment in certain bituminous coal mines were ordered, including the provisions for vacation payments contained in the Krug-Lewis agreement of May

29, 1946. In approving the paragraph of Section 7 of the agreement dealing with prorata vacation payments, your Board provided that any interpretative rules governing the making of pro-rata payments should be submitted to your Board for such further consideration and action as may be appropriate under Section 5 of the War Labor Disputes Act.

345 "Under date of June 7, this Administration submitted to your Board a proposed interpretation limiting the pro rata application of vacation pay to a full calendar month, or months, and included persons who were discharged for cause.

"Under date of June 12, the then Vice Chairman of your Board requested certain additional information before passing upon the proposed interpretation. In reply to this letter, this Administration advised Mr. Day, among other things, that under the proposed interpretation the pro rata payments would not apply to an employee who was not on the payroll of a mine at the time of Government possession under the authority of Executive Order 9728.

"Under date of June 20, you advised me that your Board voted, industry dissenting, that no further action was required with respect to the interpretation of prorated vacation payments under Section 5 of the War Labor Disputes Act. Subsequently, this Administration issued its Interpretative Bulletin No. 5, in which it took the position that the Krug-Lewis agreement applied, by its terms, to the period of Government possession and does not, except where specifically so provided, change or modify the obligations of an employer to an employee which were completed and fully accrued prior to the date of government possession and that its provision regarding pro rata

346 vacation payments have no application to persons who were not on the pay roll during the period of Government possession and operation. The United Mine Workers' representatives protested this interpretation of the contract on the ground that it does not reflect the clear meaning of the contract provision.

"Under this interpretative bulletin, coal mining companies whose mines are in the possession and control of the Government have refused to pay pro rata vacation payments to employees who left the employ of the company prior to Government possession.

"As a result, certain mine workers brought up cases for adjudication under the grievance procedure provided for in district agreements and other agreements which were carried foward and preserved by Section 1 of the Krug-Lewis agreement and constitute part of the contractual relationship between the Coal Mines Administrator and the United Mine Workers.

"Several of these cases have now proceeded through the final step of arbitration under the Illinois District Agreement and the arbitrator has ruled that Interpretative Bulletin No. 5 does not carry out the provisions of the Krug-Lewis agreement and has allowed a pro rata vacation payment to miners whose employment was terminated

347 some months prior to the period of Government possession and operation and who did not return to the employ of the same company during Government operation.

"The Coal Mines Administrator feels that he is bound by decisions arrived at in accordance with the grievance procedure contained in the underlying contract structure revived and carried forward by the

Krug-Lewis agreement and that, in the case of the arbitrator's decisions referred to above, such decisions are final and conclusive under the contract.

"This matter is being called to your Board's attention because of the correspondence referred to above and the provision contained in your Board's order of May 31, also referred to above.

"Will you kindly advise me at once of any position which your Board feels it should take in the premises?"

Defendants' Exhibit 6 is copy of letter from Wage Stabilization Board, Washington, D. C., dated October 30, 1946, and addressed to Captain N. H. Collisson, Coal Mines Administrator, Washington, D. C., and reads as follows:

"This will acknowledge receipt of your communication of October 22 concerning your intention to revise interpretation of rules governing pro rata vacation payments as referred to in the Board's order dated May 31 ordering certain changes in wages and terms and conditions in bituminous coal mines provided in the Krug-Lewis agreement of May 29.

"On October 30, 1946, the Board voted, industry dissenting, to inform you that no further action is required with regard to this matter under Section 5 of the War Labor Disputes Act."

By Mr. Hoskins:

Q. Now, Captain Collisson, in my cross-examination of you in part on Friday, we were adverting to certain meetings held beginning November 11 through November 13 of this year at which time Secretary Krug was present and you were likewise present. I think I inadvertently, perhaps, made a mistake as to one of the dates and I want to ask you to correct it if I was in error in that regard; to this extent: I adverted to meetings held between the parties on November 12. They were really held on November 13 after a day's recess between the 11th and the 13th. Is that correct, sir?

A. That is correct and I think I likewise made a mistake in my testimony in agreeing with you.

Mr. Hoskins. That was just for the purposes of the record, Your Honor, to clarify the dates of the meetings.

By Mr. Hoskins:

Q. Now, Captain Collisson, the meetings that convened on November 11 and were attended that day by representatives of both parties, and on the 13th, is it not a fact that the representatives of the Mine Workers on those two several dates, to wit, the 11th and the 13th, were composed of a negotiating committee of the Mine Workers, that is, their district presidents, who participated in the conference. That is correct, is it not?

A. Was attended by the district presidents. I am not clear whether that is their negotiating committee or not.

Q. There were some several in number, were there not?

A. That is correct.

Q. Now, Captain, one more question in reference to your letter of October 21, 1946, addressed to Mr. Lewis, to which we have previously adverted and which is in the record. I think it is Defendant's Exhibit N 1.

I read to you the first paragraph and then I should like to ask you a question based thereon.

After addressing Mr. Lewis on that date, you say:

"Secretary Krug has requested that I write to you with respect to the position of the Coal Mines Administration on two of the matters which were discussed with you at your meeting with him Saurday, October 19; namely, the pro rata retroactive vacation pay and measurement of tonnage to which five cents per ton for the Welfare and Retirement Fund is being applied."

That is a correct quote from your letter, is it not?

A. Yes.

Q. It is correct to say, then, is it not, that you were cognizant as of the time of the writing of this letter of October 21 that those two
351 points were in dipute as between Mr. Lewis and Secretary Krug as indicated in your statement adverting to their meeting of October 19, the Saturday previous?

A. That is correct.

Mr. HOPKINS. You may take the witness. I believe that completes our cross, Your Honor.

Mr. SONNETT. If the Court please, I will ask the Clerk to mark this document that I hand him Government's Exhibit No. 26 for identification.

(Thereupon, the document referred to was marked "Government's Exhibit No. 26" for Identification.)

Mr. SONNETT. If the Court please, I offer in evidence Government's Exhibit No. 26 which is a certified copy of a document entitled "Revised Regulations for the Operation of Coal Mines under Government Control."

Mr. HOPKINS. To which we offer no objection.

The COURT. Very well.

(Thereupon, Government's Exhibit No. 26 for Identification was received in evidence.)

REDIRECT EXAMINATION

By Mr. SONNETT:

Q. Captain, referring to Government's Exhibit No. 26, would you read the table of contents of that document.

352 A. Table of Contents, contained on page 1 of Government's Exhibit No. 26, reads as follows:

"TABLE OF CONTENTS

I. GENERAL:
- 1. Authority for Regulations.
- 2. Scope of Regulations.
- 3. Effect of Regulations.
- 4. Purpose of Operation.
- 5. Plan and Policy of Operation.
- 6. Definitions.

II. ORGANIZATION FOR OPERATION:
- 10. Supervision and Direction.
- 11. Designation of Area Officers-in-Charge.
- 12. Duties of Area Officers-in-Charge.

13. Designation of Advisory Councils.
14. Duties of Advisory Councils.
15. Designation of Operating Managers.
16. Status of Operating Managers.
17. Duties of Operating Managers.

III. Operation of Mines:

20. Statement of Property Taken.
21. Accounts and Records.
22. Financial and Commercial Transactions.
23. Employment.
    (a) Working conditions.
    (b) Collective bargaining.
353 (c) Employment benefits.
    (d) Personnel.
24. Application of Federal and State Law.
25. Interim Procedure for Confirmation of Financial Responsibility of Mining Company.
    (a) Execution and delivery of Instrument of Agreement and Certification.
    (b) Effect of Such Instrument.
    (c) Reservation of Right to Assert Claims, etc.
    (d) Termination of Effectiveness of Instrument.
    (e) Nonacquiescence of Liability, etc.
    (f) Inapplicability of Certain Provisions of Section 40.
    (g) Furnishing Information and Compliance.
26. Requirements as to Financial Transactions and Current Accounting.

IV. Enforcement of Regulations and Orders:

30. Enforcement Powers of Area Officers-in-Charge.
31. Removal of Operating Managers.
32. Use of Military Force.

V. Termination of Government Control:

40. Methods of Termination.

VI. 50. Regulations Superseded; Exceptions."

Q. Captain, referring to the document before you, will you please read paragraphs 1 to 5, inclusive?

A. Under Roman I, General?

Q. Yes, Arabic paragraphs 1 to 5, inclusive.

A. "General, 1. Authority for Regulations.

"These regulations are issued under authority of Executive Order No. 9728, dated May 21, 1946 (11 F. R. 5593), authorizing and directing the Secretary of the Interior

"'to take possession of any and all such mines, and, to the extent that he may deem necessary, of any real or personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines; to operate or to arrange for the operation of such mines in such manner as he may deem necessary in the interest of the war effort; and to do all things necessary for, or incidental to, the production, sale, and distribution of the coal produced, prepared, or handled by the said mines.'"

Paragraph 2 reads:

"Scope of Regulations.

"These regulations shall govern the operation of all coal mines placed under Government possession and control pursuant to Executive Order No. 9728, including any and all real and personal property, franchises, rights, facilities, funds, and other assets used in connection with the operation of such mines and the distribution and
355 sale of their products, for operation by the United States."

Paragraph 3:

"3. Effect of Regulations.

"These regulations shall supersede all prior orders or instructions governing the operation of such coal mines to the extent that such orders or instructions are inconsistent with these regulations. (See Section 50 infra as to superseding regulations heretofore in effect.)"

Paragraph 4 reads:

"Purpose of Operation.

"The primary object of Government intervention in the operation of the said properties is the maintenance of full production in the interest of the war effort, the continued operation of the national economy during the transition from war to peace, and the preservation of the national economic structure in the present emergency. All duties and authorities set forth in these regulations are to be construed in the light of this purpose, and if any regulation interferes with the accomplishment of this purpose, prompt application must be made to the Coal Mines Administration to secure the waiver or modification of such regulation.

"5. Plan and Policy of Operation.

"Control of the operations of the coal mines will be exercised by the Government to the extent necessary to maintain maximum pro-
356 duction. Wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized, and the company will continue operation in the regular course of business as a going enterprise, conforming with such directions as the Government may issue. Where the prompt and effective cooperation of the company cannot be secured, appropriate action will be taken under Sections 30 and 31 of these regulations, or otherwise.

"All properties in the possession of the Government shall be operated in a manner consistent with the fact that title to the properties remains in the owners thereof and that the Government, having temporarily taken possession or custody, will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production."

Q. Will you now read paragraph 10 of the regulations?

A. "Organization for Operation.

"Supervision and Direction.

"The power, authority, and discretion of the Secretary of the Interior with respect to the operation of the coal mines may, under the authority of Order No. 2199 of the Secretary of the Interior, dated May 21, 1946 (11 F. R. 5604), the exercise by the Coal Mines Administrator and by the Deputy Coal Mines Administrator (both hereinafter referred to as the Administrator), to the same extent and with the same effect as such power, authority, and discretion may be
357 exercised by the Secretary of the Interior. The power, authority, and discretion of the Administrator may be exercised

through such personnel of the Coal Mines Administration of the Department of the Interior and in such manner as the Administrator may determine."

Q. Now, will you read, please, paragraph 15 of the exhibit?

A. Paragraph 15:

"Designation of Operating Managers.

"The operation of the coal mines of a mining company will ordinarily be entrusted to an officer of the company formerly in charge of operations who is authorized to act for the said company and who will, under appointment of the Administrator, during the period of Government control, act as Operating Manager for the United States, while continuing to serve as an officer and employee of the mining company. At the request of the said company such person may be removed from the position of Operating Manager for the United States, and an officer or employee of the company nominated by the company may be appointed by the Administrator.

"Where the prompt and effective cooperation of the mining company in the operation of the coal mines under Government control cannot be secured, a person other than an officer or employee of the company may be designated as the Operating Manager for the United States by the Administrator.

358 "Where a company is in receivership or trusteeship the receiver or trustee will ordinarily be designated as Operating Manager for the United States."

Q. Now, will you read paragraph 16, please?

A. Paragraph 16:

"Status of Operating Managers.

"Any officer or employee of a mining company who, with the permission of, or without objection from the said company, accepts a designation as Operating Manager for the United States of the coal mines of said company shall, together with all other officers and employees, serve in full recognition of his responsibilities to the Government and subject to all orders and regulations of the Administrator, but he and all other officers and employees shall serve as agents and employees of the company with respect to all actions which they would have been empowered to take on behalf of the company in the absence of Government control of its property.

"The Operating Manager shall continue to be subject to all restrictions and limitations imposed by the company upon his exercise of his authority. In respect of any action to which or in which the company requires its special consent or concurrence, the Operating Manager shall obtain such consent or concurrence before he takes such action. If consent is denied, the Operating Manager shall so report to the Area Officer in Charge, stating the circumstances of the

359 denial The Area Officer in Charge shall transmit the report to the Administrator, and the Operating Manager may proceed to take the action in question only upon direction of the Administrator.

"Designation of any person as Operating Manager for the United States shall not be deemed to constitute him as officer or employee of the United States within the meaning of Federal statutes governing personnel.

"The appointment of any Operating Manager shall terminate at the discretion of the Administrator upon notice to the Operating Manager."

Q. Will you read paragraph 17, please?

A. Paragraph 17:

"Duties of Operating Managers.

"Operating Managers shall perform for their companies ordinary duties of management in accordance with established policies and practices, so far as consistent with these regulations and the instructions and orders of the Administrator and Area Officer in Charge and shall in addition perform all special duties placed on them as Operating Managers of the United States by these regulations, by their appointment instructions, so far as consistent with these regulations, and by such orders as the Administrator or the Area Officer in Charge may issue.

"An Operating Manager is authorized to take all necessary action in the manner in which and through the officials by
360 which it has been customarily accomplished and may, as should be necessary and convenient, take action either under his customary title and designation or as 'Operating Manager for the United States (name of company),' as hereinabove and hereinafter specified. No Operating Manager for the United States of any mining company is authorized or shall be regarded as having authority, express or implied, to bind or impose any liability on the United States or any of its officials or agents in the absence of a specific direction or order by the Administrator to that effect. Nor shall any operations of any mine property in the possession and control of the Government, or the proceeds, earnings, or liabilities of such mine property in any event be, or be regarded as being, for the account or at the risk or expense of the Government except as a specific written direction or order to that effect shall have been given by the Administrator.

361 Q. Will you refer to Paragraph 30, at page 14, and read that, please?

A. Paragraph 30, "Enforcement Powers of Area Officers in Charge.

"In any case where the prompt and effective cooperation of a mining company cannot be secured, the Area Officer in Charge may issue appropriate instructions for the operation of the coal mines of such company and shall immediately report the circumstances and his instructions to the Administrator. Pending receipt of directions from the Administrator, it shall be the duty of the Area Officer in Charge to deny access to the premises to persons not contributing to the operation of the enterprise, to prevent any interference with the coal mines or the operations under Government control, and to see that the production of coal is continued."

Q. Paragraph 31, now, please, Captain.

A. Paragraph 31, Removal of Operating Managers.

"Upon failure of an Operating Manager to comply with these regulations or the orders of the Administrator or the Area Officer in Charge or upon failure of a mining company to respect the action taken by its Operating Manager who is an official of the Company, the Area Officer in Charge shall report to the Administrator the desira-
362 bility of the removal of the Operating Manager, with such recommendations for a substitute as he may wish to make."

Q. Now, finally, Paragraph 32, Captain.

A. "Use of Military Force.

"Any request for the use of the armed forces of the United States to protect life or property in connection with the operation of any mine under the control of the United States shall be submitted by the Operating Manager in charge of the mine, or his representative, to the Area Officer-in-Charge, who shall promptly transmit it with his recommendation to the liaison officer designated by the Secretary of War for the district in question and, in those cases where it is the first time such request has been made in the area, to the Administrator, for decision as to whether a request for such protection shall be submitted to the Secretary of War pursuant to the provisions of Executive Order No. 9728. Area Officers-in-Charge are authorized, except in those cases where it is the first time such request has been made in the area, to request the use of armed forces from the United States Army through the liaison officer assigned to the area. No Operating Manager shall have authority to make a request for military protection directly to any officer of the War Department or of the United States Army."

363 Q. Captain, referring to Government's Exhibit 13, which is alongside of you, the Krug-Lewis agreement, will you examine Section 2 and read the title of that section?

A. Section 2 of Government's Exhibit 13 is entitled "Mine Safety Program."

Q. And subsection (a)?

A. Subsection (a) under Section 2 is entitled "Federal Mine Safety Code."

Q. That provision of the Krug-Lewis agreement contained in paragraph 2, Captain, was approved by the Wage Stabilization Board in the order of May 31, 1946, was it not?

A. That is correct.

Q. Had such a Federal Mine Safety Code existed in the mines prior to the Krug-Lewis agreement?

A. It had not.

Mr. SONNETT. Will you mark these documents for identification as "Government's Exhibit No. 28.")

(Copy of Order No. CMAN-2, marked for identification "Government's Exhibit No. 27.")

(Copy, in booklet form, of the Federal Mine Safety Code for Bituminous Coal and Lignite Mines, marked for identification as "Government's Exhibit No. 28.")

By Mr. SONNETT:

364 Q. Captain, I show you Government's Exhibit 27 and Government's Exhibit 28. Can you identify what those documents are?

A. Government's Exhibit 27 is a copy of Order No. CMAN-2, of the Coal Mines Administration, and the subject of this order is to provide for an interim safety code pending the preparation of the Federal Mines Safety Code.

Q. And what is Government's Exhibit 28, Captain?

A. Government's Exhibit 28 is a copy in booklet form of the Federal Mine Safety Code for Bituminous Coal and Lignite Mines of the United States, and is dated July 24, 1946, and is the code described in Section 2 of the Krug-Lewis agreement of May 29, 1946.

Mr. SONNETT. I offer in evidence Government's Exhibits 27 and 28.

Mr. HOPKINS. To which we offer no objection, Your Honor.

(The documents heretofore marked for identification as "Government's Exhibits Nos. 27 and 28" were thereupon received in evidence.)

By Mr. SONNETT:

Q. Will you refer, Captain, to Paragraph 3 of Government's Exhibit 13, that is the Krug-Lewis agreement, and if you will, please, read that paragraph.

A. Paragraph 3 of Government's Exhibit No. 13, the Krug-Lewis agreement of May 29, 1946, reads as follows:

"Workmen's Compensation and Occupational Disease.

365 "The Coal Mines Administrator undertakes to direct each Operating Manager to provide its employees with the protection and coverage of the benefits under Workmen's Compensation and Occupational Disease laws, whether compulsory or elective, existing in the States in which the respective employees are employed. Refusal of any Operating Manager to carry out this direction shall be deemed a violation of his duties as Operating Manager. In the event of such refusal the Coal Mines Administrator will take appropriate action which may include disciplining or replacing the Operating Manager or shutting down the mine."

Q. Captain, is it a fact that various of the States in which mines later seized under the Executive Order are located have Workmen's Compensation and Occupational Disease Laws which are only elective?

A. That is correct.

Q. Paragraph 3 which you have just read of the Krug-Lewis agreement was approved by the National Wage Stabilization Board in its order of May 31, 1946, was it not?

A. That is correct.

Q. Captain, I show you Government's Exhibit 29 and ask you to identify, if you will, that document.

The COURT. In the interest of orderly procedure the Court
366 would like to know whether the Government is introducing this testimony as testimony in chief or as redirect testimony.

Mr. SONNETT. As redirect, if the Court please, in response to the suggestion made by counsel for the defendants during cross-examination and in argument to the effect that the Government was not exercising sovereign function. The purpose of this is to demonstrate that the Government was and is.

The COURT. Proceed.

367 The WITNESS. Government's Exhibit No. 29 is, first a memorandum from the Coal Mines Administration, dated August 15, 1946, and signed by the Deputy Coal Mines Administrator to the Operating Managers for the United States, and in it points out the requirements of the Krug-Lewis Agreement with respect to workmen's compensation and occupational disease laws and further explains to the operating managers that the statutes of the various States in which these mines are located arrange themselves into three classes, three general classes with respect to workmen's compensation and occupational disease laws.

"And they are (a) Coverage under Workmen's Compensation and Occupational Disease Laws; both elective.

"(b) Coverage under Workmen's Compensation Laws compulsory, but elective under Occupational Disease Laws.

"(c) Coverage under Workmen's Compensation Laws elective; no Occupational Disease Laws in effect."

Also a part of Government Exhibit 29, and directly following that memorandum is Order No. CMAN-11, dated August 15, 1946, signed by the Deputy Coal Mines Administrator, and addressed to the operating managers in the States of Colorado—that is, whose mines are
located in the States of Colorado, Georgia, Indiana, Missouri,
368 Nebraska, New Mexico, North Carolina, Pennsylvania and
West Virginia, and it takes that classification and is an order by the Government to the operating managers directing them to comply with those laws.

Order No. CMAN-11 (a) is a similar directive or order from the Coal Mines Administrator signed by the Deputy Coal Mines Administrator, and dated August 15, 1946, to the operating managers for mines located in the States of Illinois, Kentucky, and Virginia, directing them to put into effect the State laws on workmen's compensation and occupational disease laws as found in those three States.

And, finally, Government's Exhibit 29 contains a copy of Order No. CMAN-11-B, dated August 15, signed by the Deputy Coal Mines Administrator and addressed to the operating managers whose mines are located in Alabama, Kansas, Tennessee, and Texas, directing them to put into force and effect the workmen's compensation and occupational disease laws found in those afore-mentioned States.

By Mr. SONNETT:

Q. Captain, will you refer again to the Krug-Lewis Agreement, paragraph 4, and read the first three or four sentences of that paragraph?

A. Paragraph 4 of the Krug-Lewis Agreement, Government's Exhibit No. 13, reads as follows:

"Health and welfare program.

369 "There is provided a health and welfare program in broad outline—and it is recognized that many important details remain to be filled in—such program to consist of three parts, as follows:"

Shall I continue?

Q. Will you read subparagraph (a), at least the first several sentences of it?

A. Subparagraph (a) under Section 4 of the Krug-Lewis Agreement, reads as follows:

"A welfare and retirement fund.

"A welfare and retirement fund is hereby created and there shall be paid into said fund by the operating managers five cents per ton on each ton of coal produced for use or for sale. This fund shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the president of the United Mine Workers, and the third chosen by the other two."

Shall I continue?

Q. Read the next sentence, please, Captain.

A. (Continuing): "The fund shall be used for making payments to miners, and their dependents and survivors, with respect to (1) wage loss not otherwise compensated at all or adequately
370 under the provisions of Federal or State law, and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (2) other related welfare purposes, as determined by the trustees."

Q. Captain, did any such welfare and retirement fund exist with respect to the seized mines prior to the Krug-Lewis Agreement?

A. Not to the best of my knowledge and belief, it did not.

Q. Was that provision of the Krug-Lewis Agreement approved by the Wage Stabilization Board in its order of May 31, 1946?

A. It was.

Q. I show you Government's Exhibits 30 and 31, Captain, and ask if you can identify those documents.

(The documents were handed to the witness.)

A. Government Exhibit No. 30 is a copy of Order No. CMAN-5, signed by the Coal Mines Administrator and dated 2 July 1946. It is directed to the operating managers for the United States, and directing that they comply with the memorandum of agreement dated June 27, 1946, between the Coal Mines Administrator and the United Mine Workers of America, under which agreement there was provision made for an interim operating program for the
371 collection and custodianship of monies collected for the welfare and retirement fund in accordance with Section 4 (a) of the Krug-Lewis Agreement.

Government's Exhibit No. 31 is a copy of Order No. CMAN-8, signed by the Deputy Coal Mines Administrator, under date of July 29, 1946. It is directed to the operating managers for the United States of America, and it prescribes the procedure in detail under which those operating managers shall make payment of the five cents per ton collected in accordance with Section 4 (a) of the Krug-Lewis Agreement.

372 Mr. SONNETT. I offer in evidence, if the Court please, Exhibits 29, 30, and 31.

Mr. HOPKINS. To which the defendants offer no objection.

The COURT. Very well.

(Thereupon, Government's Exhibits Nos. 29, 30, and 31 for identification were received in evidence.)

By Mr. SONNETT:

Q. Captain, will you refer to Paragraph 4 (b) of the Krug-Lewis Agreement and read that paragraph?

A. Paragraph 4 (b) of Government's Exhibit No. 13, the Krug-Lewis Agreement, reads as follows:

"A Medical and Hospital Fund.

"There shall be created a Medical and Hospital Fund, to be administered by trustees appointed by the president of the United Mine Workers. This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide or to arrange for the availability of medical, hospital, and related services, for the min-

ers and their dependents. The money in this fund shall be used
373 for the indicated purposes at the discretion of the trustees of the fund; and the trustees shall provide for such regional or local variations and adjustments in wage deductions, benefits and other practices, and transfer of funds to local unions as may be necessary and as are in accordance with the agreements made within the framework of the Union's organization."

"The Coal Mines Administrator agrees (after the trustees make arrangements satisfactory to the Coal Mines Administrator) to direct each operating manager to turn over to this fund, or to such local unions as the trustees of the fund may direct, all such wage deductions, beginning with a stated date to be agreed upon by the Administrator and the President of the United Mine Workers; provided, however, that the United Mine Workers shall first obtain the consent of the affected employees to such turn-over. The Coal Mines Administrator will cooperate fully with the United Mine Workers to the end that there may be terminated as rapidly as may be practicable any existing agreements that earmark the expenditure of such wage deductions, except as the continuation of such agreements may be approved by the trustees of the fund.

374 "Present practices with respect to wage deductions and their use for provision of medical, hospital, and related services shall continue until such date or dates as may be agreed upon by the Coal Mines Administrator and the President of the United Mine Workers."

Q. Captain, I show you Defendants' Exhibit 1, a letter from you to Mr. John L. Lewis, president of the United Mine Workers, of October 21, 1946, and ask, please, if you will read the first full paragraph of page two of the exhibit.

A. The first full paragraph on page two of Defendants' Exhibit No. 1 reads as follows:

"Although the underlying contract structure consisting of the district agreements provides machinery for the disposition of any disputes arising under the contract, and this machinery is believed available for disposition of any differences over the meaning of the provisions of the Welfare and Retirement Fund clauses in view of the fact that the differences between the Coal Mines Administration and the United Mine Workers are in general common to all mines in Government possession and control, this Administration is agreeable to the appointment of a mutually satisfactory umpire—preferably an outstanding jurist—to whom this dispute may be submitted for a determination to be applicable to all mines subject to the Agreement."

375 Q. In other words, Captain, you suggested that with respect to the controversy over the 4 (a) fund—that is, the Welfare and Retirement Fund—that the dispute referred to in that exhibit, Defendants' Exhibit 1, be submitted to a mutually satisfactory umpire to be appointed by the Government and by the defendants, preferably an outstanding jurist, in order to try to reach some agreement or resolution of that dispute. Is that correct?

Mr. HOPKINS. Before you answer, we object to the question, because——

The COURT. Objection sustained.

By Mr. SONNETT:

Q. Captain, did you ever get a response from the defendants, or either of them, to the suggestion which you made in that letter, Defendants' Exhibit 1?

A. No; I did not.

Q. I believe your prior testimony was to the effect that the sum now being held in the Welfare and Retirement Fund aggregates some $10,100,000. Is that correct?

A. That is correct.

Q. And up to the present time you have had no suggestions from the defendants concerning their desire or lack of desire to appoint an umpire as suggested in that letter?

Mr. HOPKINS. To which we object, Your Honor, for the same
376 reasons that the document speaks for itself, to wit, the letter, and if I understand his question correctly, now he is going into repetition of his previous question which he is asking this defendant for a conclusion. Perhaps I misunderstood him.

The COURT. Maybe I have overlooked something, but as I understand it, of course the document speaks for itself, but what he is asking now is whether or not the suggestion contained in the document was ever recognized in any way by the defendants.

Is that what you are asking?

Mr. SONNETT. That is exactly it, sir.

Mr. HOPKINS. I withdraw my objection. I did not understand it.

The COURT. Yes, sir.

The WITNESS. May I have the question read, please?

The REPORTER (reading):

"Q. I believe your prior testimony was to the effect that the sum now being held in the Welfare and Retirement Fund aggregates some $10,100,000; is that correct?

"A. That is correct.

"Q. And up to the present time you have had no suggestions from the defendants concerning their desire or lack of desire to appoint an umpire as suggested in that letter?"

A. That is correct.

377 Q. Now, with respect to the provision, Captain, of the Krug-Lewis Agreement providing, in substance, that the welfare and retirement fund—and I quote: "shall be managed by three trustees, one appointed by the Coal Mines Administrator, one appointed by the president of the United Mines Workers, and the third chosen by the other two," did the Government suggest the name of any person to the defendants who might be the Government's trustee under that provision?

A. Yes.

Q. What was the name of that person?

A. The name of the person suggested as the trustee by the Secretary of the Interior was Rear Admiral James Boyle, U. S. N., retired.

Q. Have the defendants ever appointed their trustee under that agreement?

A. Not to the best of my knowledge and belief.

Q. Captain, I refer you to 4–B of the Krug-Lewis Agreement, which deals with the Medical and Hospital Fund, and then to Section 10 of the Krug-Lewis Agreement, and ask if you will read Section 10, please.

A. Section 10 of the Krug-Lewis Agreement, Government Exhibit No. 13, reads as follows:

"Fines and Penalties.

378 "No fines or penalties shall be imposed unless authorized by the Coal Mines Administrator. In the event that such fines or penalties are imposed by the Coal Mines Administrator, the funds withheld for that reason shall be turned over to the trustees of the fund provided for in Section 4–B hereof, to be used for the purpose stated therein."

Q. Will you refer back to 4–B and read the second sentence and the third sentence of 4–B?

A. The second and third sentences of paragraph 4–B of the Krug-Lewis Agreement, Government Exhibit 13, read as follows:

"This fund shall be accumulated from the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital, and related purposes. The trustees shall administer this fund to provide, or to arrange for the availability of medical, hospital, and related services for the miners and their dependents."

Q. Now, will you read the first sentence of 4–B, Captain?

A. The first sentence of 4–B reads:

"There shall be created a medical and hospital fund, to be administered by trustees appointed by the President of the United Mine Workers."

Q. Captain, to your knowledge, has the president of the United Mine Workers ever appointed trustees under Section

379 4–B of the Krug-Lewis Agreement?

A. Not to my knowledge.

Q. Now, Captain, have any fines or penalties ever been imposed and authorized under Section 10 of the Krug-Lewis Agreement?

A. They have been authorized by the Coal Mines Administration.

Q. Now, it is also true that from time to time requests for the imposition of fines have been made and that they have not been authorized by the Coal Mines Administration?

A. That is correct.

Q. Upon what basis, substantially, has the Coal Mines Administrator either approved or disapproved a request for the imposition of fines?

A. Upon the basis of the district agreements or contracts brought forward by the Krug-Lewis Agreement and an investigation of the events leading up to the alleged violation, purely upon the facts developed and the requirements of the contract, we approve or disapprove and hence authorize or refuse to authorize the fine.

Q. As a matter of general principle, which I think you testified to on cross-examination, when you find that, in your opinion, an Operating Manager had in any way instigated the walk-out, have you refused to authorize the imposition of the fine?

380 A. Yes; many of them.

Q. On the other hand, where you have not found that the Operating Manager has in any way instigated the walk-out, but that there was clearly, in your opinion, an improper walk-out, you have authorized the imposition of the fines?

A. That is correct.

Q. Now, I refer you, Captain, to Government Exhibit 18, a memorandum of the agreement of August 28, 1946, signed by the Coal Mines Administrator and by John O'Leary, Acting President of the United Mine Workers, and ask you if you will read that document in full.

A. Government Exhibit No. 18 is a copy of an Agreement dated August 28, 1946, reading as follows:

"The undersigned hereby agree as follows:

"1. Pending the making of proper arrangements for trustee operation of the Medical and Hospital Fund provided for in Section 4–B of the Krug-Lewis Agreement of May 29, 1946, the International Secretary-Treasurer of the United Mine Workers of America is hereby designated to act as custodian of the money accruing to such fund by virtue of the provisions of Section 10 of said Krug-Lewis Agreement.

"2. If any fines or penalties under such Section 10 of said Agreement are authorized by the Coal Mines Administrator the funds withheld for that reason shall be turned over to the said International Secretary-Treasurer of the United Mine Workers of America as said custodian in trust for the benefit of said Medical and Hospital Fund when put into operation;

381

"3. The function of said custodian shall be limited to the receipt and safe keeping of said money derived from the terms of said Section 10 of the Krug-Lewis Agreement and to account therefor to the trustees of said Medical and Hospital Fund as provided in Section 4–B of said Agreement;

"4. This Agreement prescribed an operating program in accordance with the basic provisions of Section 4–B and Section 10 of said Agreement of May 29, 1946, and is not a modification of the terms and conditions set forth in that Agreement."

That is signed by Ben Moreell, Coal Mines Administrator, and John O'Leary, Acting President, United Mine Workers of America.

382 Q. Captain, I don't think I quite got the last paragraph. Will you re-read Paragraph 4, please?

Mr. HOPKINS. It is repetition, Your Honor.

Mr. SONNETT. Now, if Your Honor please, counsel has been cross-examining this witness at some length to demonstrate——

The COURT. The Court overrules the objection.

A. Paragraph 4 of Government's Exhibit 18 reads as follows:

"4. This agreement prescribes an operating program in accordance with the basic provisions of Section 4 (b) and Section 10 of said agreement of May 29, 1946, and is not a modification of the terms and conditions set forth in that agreement."

Signed Ben Moreell, Coal Mines Administrator; John O'Leary, Acting President, United Mine Workers of America.

Q. Captain, is it the fact that neither the Government of the United States nor any of the operators of the coal mines would receive any portion of the fines and penalties imposed under Section 10 of the Krug-Lewis agreement?

Mr. HOPKINS. We object to that, Your Honor. It is a conclusion of the witness. The contract speaks for itself, and if he wants to emphasize it——

383 The COURT. I think that is a matter of construction.

Mr. HOPKINS. Yes, sir.

The COURT. I will sustain the objection.

By Mr. SONNETT:

Q. Is it a fact that any and all penalties which may be imposed and have been imposed are paid over and have been paid over to the International Secretary-Treasurer of the United Mine Workers of America, as custodian of such funds?

A. I could not testify as to whether they have been paid over. Our function is to direct the Operating Manager to withhold those moneys from the wages of the persons involved, and further directing him to turn such money over to the Secretary-Treasurer of the United Mine Workers of America, but I do not have any way to know at the moment whether he has or has not in each case.

Q. But you have issued such direction?

A. That is correct.

Q. I don't think I asked you, what is the total amount of fines and penalties thus far imposed, to the best of your knowledge?

A. The total amount of fines and penalties authorized by the Coal Mines Administration, as of November 22, 1946, approximated $158,000.

Q. Captain, will you refer again to the Krug-Lewis agree-
384 ment, paragraph 6 of that agreement, and read the paragraph?

A. Paragraph 6 of the Krug-Lewis agreement, Government's Exhibit 13, reads as follows:

"Wages.

"(a) All mine workers, whether employed by the day, tonnage, or footage rate, shall receive $1.85 per day in addition to that provided for in the contract which expired March 31, 1946.

"(b) Work performed on the sixth consecutive day is optional, but when performed shall be paid for at time and one-half or rate and one-half.

"(c) Holidays, when worked, shall be paid for at time and one-half or rate and one-half. Holidays shall be computed in arriving at the sixth and seventh day in the week."

Q. Captain, that represented a change, did it not, in the terms and conditions of employment respecting wages which had been in effect at the seized mines prior to Government seizure?

A. That is correct.

Q. Can you state approximately what percentage of increase in wages to the mine workers was provided for by that Paragraph 6 of the Krug-Lewis agreement?

Mr. HOPKINS. We submit again it is a conclusion of the
385 witness. The contract speaks for itself. If counsel for the Government here is undertaking to——

The COURT. The Court sustains that objection.

Mr. SONNETT. The Government offers the following proof, Your Honor:

That a substantial change by way of an increase in the wages of the miners was provided for by this agreement, and furthermore, that by direction of the Government that change was made effective with respect to employment at the mines.

The COURT. Of course, it is not exactly clear to the Court under what circumstances the change was made. If the Government offers to prove the change was made on the basis of Section 5 of this Smith-Connally Act——

Mr. SONNETT. I haven't as yet come to that, Your Honor, but I am laying a foundation for that very line of questioning.

The COURT. If that is the purpose of it the Court thinks it is proper because it is some evidence tending to show that it was the understanding at the time the Krug-Lewis agreement was made that differences should be adjusted by Section 5 of the Smith-Connally Act. If that is the purpose of it, it is admissible.

Mr. SONNETT. May we proceed then with an answer to the question, if the Court please?

386 Mr. HOPKINS. If the Court please, now the matter of this testimony, as I understand it, under the answer that counsel has given to the Court, is already in this record. It is in this record that the Krug-Lewis agreement was executed on May 29. It is in this record that the Wage Stabilization Board approved that contract in all of its parts on May 31. What more is there to be gained, than from the standpoint of repetition, we submit, Your Honor, for this record if the contract is in there and it is approved and it is in the record to that effect? We submit it is plain repetition.

The COURT. The Court may not understand entirely the defense; but as the Court understands it, the defense, or part of the defense, is that Article 15, or Section 15, I forget which, of the Bituminous Coal Agreement, was the effective measure whereby differences were to be adjusted and the Government claims that that section or paragraph, whichever it is, was not carried forward into the Krug-Lewis agreement, but that the differences were to be adjusted in accordance with Section 5 of the Smith-Connally Act.

If I am correct in that, then the Court thinks that any evidence tending to show that both parties to the agreement recognized the validity of Section 5 of the Smith-Connally Act is material to the issue.

Mr. HOPKINS. We sumbit, Your Honor, that the question of
387 the interpretation of Section 15, to which the Court has adverted, and all the proof that Government is offering here in reference to the Krug-Lewis agreement on that point, and in reference to Section 5 of the War Labor Disputes Act is an issue, if at all, in the complaint in chief as filed here by Government for declaratory judgment. It cannot be made and is not an issue before Your Honor now on the question of contempt.

The COURT. Let us see: Defendants have claimed and are claiming now there is no contempt, and I presume that one thing they are trying to prove is that they acted in good faith, so that even if they should be found in contempt the punishment for the contempt would be very different than the punishment for deliberate violation of their agreement. I just suppose all that is in the picture, sir, and if it is it is admissible.

Mr. HOPKINS. May I add this for observation of the Court and Government counsel? This witness was not a participant in the execution of the Krug-Lewis agreement, which I think you will admit, Your Honor.

Mr. SONNETT. Is counsel testifying now, if the Couet please?

Mr. HOPKINS. I want to make that statement in order that it may be a predicate for the objection.

If the interpretation of the parties in reference to Section 15
388 or any other matter of the Krug-Lewis agreement is to be had it should come from the actual negotiators of that contract,

Your Honor. Not that I doubt at all the integrity of this witness, but I think he himself was not a party to the original negotiation. Therefore, we feel that an objection to his testimony now that would seek to interpret the Krug-Lewis agreement in reference to those points is well taken.

The COURT. He is not asking for an interpretation. He is asking for facts, aren't you?

Mr. SONNETT. Exactly so.

The COURT. Government counsel is now asking for facts. If the witness doesn't know the facts he shouldn't testify to them.

Mr. HOPKINS. I am sure he wouldn't undertake to.

The COURT. And if he claims he does he is subject to cross-examination.

Mr. HOPKINS. Very well. We just want to repeat for the record, Your Honor, that in our opinion the objection is well taken because it is not pertinent nor germane to the issue before Your Honor at this time.

The COURT. The objection is overruled, and the Court will take a five-minute recess.

(Short recess.)

389 By Mr. SONNETT:

Q. Captain, referring to paragraph 6 of the Krug-Lewis Agreement, will you state approximately what percentage of increase in the wages of the mine workers was provided by that paragraph?

A. On the basis of a basic rate of one dollar, this provided for approximately an 18½ percent increase.

Q. Now, that increase in that provision was submitted to the Wage Stabilization Board and approved by it in its order of May 31, 1946, was it not?

A. That is correct.

Q. Captain, I show you Government Exhibit 15 and ask you if it is not the order of the Coal Mines Administration, putting into effect the wage provisions and other provisions of the Krug-Lewis Agreement after the approval of that Agreement by the Wage Stabilization Board.

A. It is.

Q. Captain, I refer you now to Section 11 of the Krug-Lewis Agreement and ask if you will read that.

A. Section 11 of Government Exhibit No. 13, the Krug-Lewis Agreement, reads as follows:

"Supervisors.

"With respect to questions affecting the employment and bargaining status of foremen, supervisors, technical and clerical
390 workers employed in the bituminous mining industry, the Coal Mines Administrator will be guided by the decisions and procedure laid down by the National Labor Relations Board."

Q. That provision was submitted to the Wage Stabilization Board, was it not?

A. That is correct.

Q. Did that provision represent a substantial change over the practice which had existed prior thereto in the mines?

A. It did.

Mr. SONNETT. Would you mark these as three exhibits and let me have them back? I want to refer to them.

(Three documents were marked as "Government Exhibits 36, 37, and 38 for identification.")

Mr. SONNETT. If the Court please, I have here Government Exhibit 36, Government Exhibit 37, and Government Exhibit 38 for identification.

The first consists of a certified copy of the brief and appendix of the Government in the United States Court of Appeals for the District of Columbia in case No. 9342, entitled "Jones and Laughlin Steel Corporation, Appellant, against United Mine Workers of America, et al.," the brief being submitted by the Department of Justice.

Government Exhibit 37 is the appendix to appellant's petition and brief in the same matter, the record containing the proceedings in this court in that matter, including, if the Court please, an
391 answer submitted in that case by these defendants.

I have further Government Exhibit 38, a statement signed by counsel in this matter for these defendants, and submitted to the Circuit Court of Appeals, in which counsel adopt as their brief on appeal in the Circuit Court in that case the brief submitted by the Government, with specific reference to the answer submitted by these defendants in that case.

I should like to read and subsequently make an offer of these documents.

The answer of the defendant United Mine Workers of America, an unincorporated association——

The COURT. When was the date that brief was filed?

Mr. SONNETT. The brief, if the Court please, was filed——

The COURT. The defendants' brief, I mean.

Mr. SONNETT. The defendants' statement, if the Court please, adopting the brief of the Government in the Circuit Court, was filed on September 24, 1946, according to the certification of the Clerk.

The answer of the defendants in this court, filed June 25, 1946, appears at page 131–A and following pages of Government Exhibit 37 for identification. In that answer the defendants allege in part:

"1. This court is without jurisdiction to grant said preliminary injunction as prayed."

392 That was an injunction, as appears from the record, prayed for by Jones and Laughlin Steel Corporation to prevent the execution of that paragraph of the Krug-Lewis Agreement which deals with the unionization of supervisory employees, all of which appears more fully in these documents.

The answer of these defendants in that case also alleges that the complaint by the Jones and Laughlin Steel Corporation was in legal effect and substance a suit against the United States, to the filing of which there exists no Congressional authorization, consent, or permission, and any preliminary injunction, therefore, as moved by this plaintiff, would be one directed against the United States acting through its duly-authorized officers and agents.

The answer of the defendants in that case in this court, also, in paragraph 6, stated:

"This Court will not enjoin the defendants Krug and Moreell even temporarily, because neither has done or threatened to do any act to

invade any right of this plaintiff. Being in lawful possession of the mines and operating them under the lawful order of the President, their policies, management, operation, and control of the mines during the time in which these defendants are in lawful possession thereof will not be restrained or enjoined by this Court in the absence of a clear showing of fraud, oppression, or illegal conduct upon their part or that of either of them or the injury or destruction of the rights of this plaintiff."

393 In Government's Exhibit 36, which was the brief of the Government on appeal in that case, the Government asserted in part——

The COURT. Was that brief adopted?

Mr. SONNETT. It was, as shown by Government's Exhibit 38, for identification, if the Court please.

The COURT. Sir?

Mr. SONNETT. It was as shown by Government's Exhibit 38 for identification.

In the Government's brief—perhaps, if the Court please, I should first read the adoption of the Government's brief in the Circuit Court by these defendants.

That is, Government's Exhibit 38 for identification, reads as follows:

"In the United States Court of Appeals for the District of Columbia.

"Jones and Laughlin Steel Corporation, Appellant, versus United Mine Workers of America, et al., Appellees, No. 9342.

"Memorandum as to brief of United Mine Workers of America, an unincorporated association, and John L. Lewis, as a representative member thereof.

"It appearing that J. A. Krug, Secretary of the Interior, as Coal Mines Administrator, and his deputy, appellees herein, have

394 already filed in this cause their brief on appeal, and it further appearing therefrom that the points made in said brief and authorities cited therein are in substance and to all intents and purposes the points and authorities upon which these two appellees will rely upon the argument of this appeal, and it further appearing that an additional brief now filed on behalf of the United Mine Workers of America and John L. Lewis, appellees, as hereinbefore stated would be but a repetitious and duplicating burden upon the files of this court, with no substantially new matters being set up in said brief, with the permission of the other appellees already obtained, the United Mine Workers of America, an unincorporated association, and John L. Lewis as a representative member thereof, announce that they will rely upon the said brief already filed as aforesaid as and for and in lieu of any additional brief otherwise to be filed by them."

Signed: "William E. Leahy."

Signed: "Welly K. Hopkins."

Signed: "Harrison Coombs."

395 Signed: "Samuel Krunsky, Attorneys for appellees."

Now, the Government's brief which was thus adopted, if the Court please, in the Circuit Court of Appeals——

The COURT. The Government, I assume, appears on the theory that it was the real defendant under the Krug-Lewis Agreement. Is that correct?

Mr. SONNETT. Yes, Your Honor; and, further, that it was acting in a sovereign capacity and the suit was against the United States.

The COURT. It was against the United States?

MR. SONNETT. That was the Government's contention.

The COURT. I see.

Mr. SONNETT. A contention adopted expressly by these defendants in that case.

The COURT. The position of the Government was, it was adopted by the national defendants?

Mr. SONNETT. Correct, sir.

The Government's brief in that case, at page five, if the Court please, states in part, and I quote:

"On May 29, 1946, after negotiations with the appellee union, an agreement (the 'Krug-Lewis Agreement') was entered into between the Secretary of the Interior and the appellee union establishing subject to the approval of the National Wage Stabilization
396 Board and the President of the United States, the terms and conditions of employment at the mines for the period of the Government's possession."

At page 14 of the Government's brief in that case, it was stated:

"To read the War Labor Disputes Act and the Executive Order—as appellant apparently suggests we must—so as to withhold from the Government agency made responsible for the operation of Government-possessed plants, the power to eradicate the roots of the labor disturbance which compelled Government seizure, would be to frustrate the Congressional purpose and to impute to the Congress and to the President an incredible myopia as to the realities of wartime labor relations. Experiences prior to the enactment of the War Labor Disputes Act had made it quite clear that Government seizure in itself could hardly accomplish a resumption of production in industrial plants torn by labor strife."

Again, the Government's brief in that case, at pages 22 to 25, read as follows:

"The regulations for the operation of coal mines under Government control do not preclude the execution and effectuation of the agreement with U. C. T."

The brief states:

397 "The regulations were formulated in an effort to assure the minimum of Government intervention in the operation of the coal properties consistent with the primary purpose of Government possession, that is, the maintenance of full, uninterrupted coal production. This purpose was in accord with the Presidential dictate in his Executive Order, that the Secretary of the Interior 'shall permit the managers of the mines taken to continue with their managerial functions to the maximum degree possible consistent with the aims of this order.'

"The regulations contemplate that the mining companies, appreciating the necessity for Government intervention, will cooperate with the Secretary of the Interior in the operations of the mines. It is made clear, however"—and this portion is underscored—, "that acceptance of the cooperative arrangement by the owners does not in any sense free them from compliance with directions issued by the Secretary and Coal Mines Administrator, and provisions made for terminating the arrangement should any operator refuse to comply with such directions.

"Thus, although it is provided that 'all properties in the possession of the Government shall be operated in a manner consistent
398 with the fact that title to the properties remains in the owners thereof and that the Government having temporarily taken possession or custody will assert only such rights as are necessary to accomplish the national purpose of continued and maximum production' and that 'wherever the cooperation of the company and its personnel can be secured, the existing organization of the mining company will be utilized and the company will continue operation in the regular course of business as a going enterprise', it is clearly stipulated that"—and this is underscored—"the companies must conform 'with such directions as the Government may issue.'

"Furthermore, all officers and employees of the company are directed to 'serve in full recognition of (their responsibilities to the Government) and subject to all orders and regulations of the Coal Mines Administrator, and where cooperation of the company cannot be secured, provision is made for supplanting private management with Government management.'"

The brief, if the Court please, continues to discuss the regulations concerning which counsel for the defendants have cross-examined in this case and which the Government this morning has put into evidence in this case, and to point out——

Mr. PADWAY (interposing). Now just a minute, Mr.
399 Sonnett.

May it please the Court, this all may be very interesting, but it appears to me that the proper time for this would be in argument.

Now, the brief has been offered, I understand, or will be offered if it has not——

Mr. SONNETT (interposing). As soon as I make clear to the Court what is in the brief, I will then offer it.

Mr. PADWAY. That is just what I am objecting to.

The COURT. Mr. Padway says that this last remark of yours, sir, is an interpretation of the brief. Isn't that what you say?

Mr. PADWAY. Yes. Now, Your Honor——

The COURT. Just a minute. And, if it is an interpretation of the brief, it is not admissible in evidence.

Isn't that what you say?

Mr. PADWAY. Yes.

The COURT. Well, of course, you are right. I sustain the objection.

Mr. PADWAY. Counsel may, at the conclusion of testimony, argue it if he——

The COURT. The Court has sustained your objection, Mr. Padway.

Mr. PADWAY. Then I will remember the admonition you
400 gave to Mr. Sonnett the other day and I will take it now.

Mr. SONNETT. If the Court please, I did not intend to offer this as an interpretation. I was unconsciously reading from the brief.

The brief, on page 25, says——

Mr. PADWAY (interposing). Now just a moment.

Counsel is going to do the same thing I am objecting to.

The COURT. He is reading from the brief now, Mr. Padway.

Mr. PADWAY. Even so, even so; the brief, I understand, will be offered, or portions of it.

Now, to read this brief at this time and show respective contentions of parties to another lawsuit is wholly inadmissible.

Aside from that, if counsel were to take the time, I presume he would read the entire brief.

In what way is that going to enlighten us except with respect to argument? Then our brief would be read.

We are contending there one particular position, and the Government is contending another. That is another lawsuit. Its applicability to this lawsuit can have nothing else but an argumentative effect.

Now, I don't think that should be done. Besides, it takes time.
401 Aside from that, there is a large record here. This record must be written up, it must be paid for.

Now, when the time arrives, and that is when the evidence is all in, if counsel wishes to enlighten this Court respecting admissions or positions taken in another suit which may have a bearing on this suit, that is the time to do it.

But this is in the nature of testimony on the part of counsel, on the part of Mr. Sonnett, where, in another lawsuit, we said thus and so. To me that is not evidence, but argument.

The COURT. After you finish your reading, are you having a question to the witness on what you are reading?

Mr. SONNETT. Only to this extent, if the Court please. Counsel cross-examined at some length on the theory which he announced to this Court that the operation of these mines by the Government——

The COURT. That is true, sir, but would the reading of the brief—and it was not objected to until just a moment ago—would the reading of that brief throw light on this witness' testimony as redirect testimony, or should this be introduced as independent testimony?

Mr. SONNETT. I think, if the Court please, an offer either way would be appropriate, but I——
402 The COURT. You see what I mean. Just to read it in the presence of the witness does not make it his testimony, sir.

Mr. SONNETT. What I had in mind, if the Court please, was that perhaps counsel might want some further opportunity on recross of this witness, and I did not want to deprive him of that opportunity.

Mr. PADWAY. We understand the Government, if the Court please, does not deprive us of that. We are not accusing the Government with any lack of liberality with respect to any information, or with a lack of opportunity to meet their contentions. We know what they are.

The COURT. Mr. Padway, the Court waited for an objection, and a large part of this brief was read before there was any objection.

Mr. PADWAY. That is true.

The COURT. But of course the Court agrees with you that if the brief is admissible at all, that it is admissible in itself and not as redirect examination of this witness.

If that is your objection.

Mr. PADWAY. That is my objection.

The COURT. Then the Court sustains it.

Mr. SONNETT. If the Court please, my reading of the brief——

The COURT. The Court does not think it should strike out
403 testimony already introduced before the objection was made.

Mr. HOPKINS. If the Court please, in that regard, one reason that counsel for the defendants had not heretofore interposed an

objection upon the point stated by Judge Padway, was the fact that Government counsel was merely identifying documents he has not yet offered.

The COURT. Gentlemen, the Court will resolve that right away.

If there is any misunderstanding, then the Court thinks that the testimony heretofore introduced by the plaintiff as to the contents of those briefs should be stricken; the brief should be offered if the Government desires to offer it, at a later time and not in connection with the examination of this witness.

The Court will pass upon their admissibility at that time.

Mr. SONNETT. If the Court please, the Government in that event is through with this witness and will make an offer of this proof at the conclusion of the witness' testimony.

The COURT. Very well.

Is there any further examination of this witness, gentlemen?

Mr. HOPKINS. May it please Your Honor, there are a few questions that come from the redirect examination of this witness.

404 RECROSS-EXAMINATION

By Mr. HOPKINS:

Q. I believe, Captain Collisson, on redirect examination you identified Government's Exhibits 27 and 28 as an interim order of the Coal Mines Administrator, under Exhibit 27, in reference to the Safety Code, and Exhibit 28 was the Code itself.

May I not ask you, sir, inasmuch as that was based upon Section 1 of the Krug-Lewis agreement, is it not a fact, sir, that the matter of the Mine Safety Code was one of long dispute as between the Coal Mines Administration and the Mine Workers in the actual preparation thereof? That is correct, isn't it?

A. May I have that question again, Mr. Hopkins? I am not sure I understand the question.

Q. Is it not a fact that the preparation of that Mine Safety Code was a matter of long dispute as between the Coal Mines Administration and the Mine Workers in its preparation?

A. Yes; I think that Code took at least a month and a half to prepare, and during that time there was dispute over points to be contained in it.

Q. It is a fact, is it not, that Section 2 of the Krug-Lewis agreement provides that:

"As soon as practicable and not later than thirty days from
405 the date of the making of the agreement, the Director of the Bureau of Mines after consultation with representatives of the United Mine Workers and such other persons as he deems appropriate, will issue a reasonable code of standards and rules pertaining to safety conditions and practices in the mines."

That is correct, is it not?

A. That is correct.

Q. And as a matter of fact that code was not promulgated until sometime in July, isn't that right, about July 29?

A. I don't remember the date, but sometime in July is correct.

Q. July 24?

A. Yes.

Q. Is it not a fact that before the promulgation of that code as presented through Government's Exhibit this morning, that there was a previous code agreed to that was not actually approved by the Director of the Bureau of Mines, and was printed on the 27th of June?

A. There was a previous code submitted by the Director of the Bureau of Mines.

Q. And that previous code had been printed and had gone out to the field in many instances, had it not?

A. I am not clear. There was no disseminating of the code
406 from our office, that is the Coal Mines Administrator. If any other Administrator had sent it out, I am not familiar, but we have not.

Q. And after it had been approved and printed what was the reason it wasn't put into effect?

A. The reason the code was not put into effect was that it had, in the opinion of the Coal Mines Administration, impractical provisions.

Q. Although those provisions had been approved by the Director of the Bureau of Mines?

A. That is correct.

Q. Is it not a fact that the Mine Workers objected, and objected strenuously, to the recalling of that first Safety Code?

A. It is my understanding they did.

Q. And is it not true there was a continuous dispute between the Mine Workers and the Coal Mines Administration in reference to points that should be included in the second code that undertook to take the place of the first code?

A. During the preparation of the second code?

Q. Yes, sir.

A. I don't recall. I don't recall any submissions. As I recall it the Mine Workers withdrew from those conferences and were not present.

Q. Upon the ground, was it not, to refresh your recollection,
407 that the second code was taking out of the first code matters of safety that had been approved by the Director of the Bureau of Mines?

A. I believe that is correct.

Q. As a matter of fact, isn't it also true that one of the reasons the Mine Workers were undertaking in that dispute upon that safety code to have it go into effect was the experience known as Straight Creek, Kentucky, where 24 men lost their lives on Christmas Eve night, 1945? Wasn't that one of the reasons that was assigned?

A. I don't recall that reason being brought up, but I should certainly think it was one, yes.

Q. And Straight Creek Mine was under Government seizure, was it not?

A. It was included in the list of Government mines seized——

Q. (Interposing). During the Government possession——

The COURT. Don't interrupt the witness.

The WITNESS. —although the disaster had occurred in December of 1945, if my memory is correct.

By Mr. HOPKINS:

Q. Christmas Eve night.

A. —and therefore the seizure notice not going out until May 21, 1946, the mine was inoperative.

Q. During the Government's possession of properties, such as
408 they were, and prior to being released by the Government, you did take jurisdiction over the matter of obtaining the bodies of 21 men out of that mine, as a result of lack of enforcing proper safety, didn't you?

A. We took no jurisdiction over getting the men out——

Q. (Interposing). You made inquiry officially of the Coal Mines Administrator——

The COURT. Mr. Hopkins, the rule in this Court in this——

Mr. HOPKINS. Pardon?

The COURT. The rule in this Court is this, that a witness cannot be interrupted in the middle of his answer, or at any other point of his answer. If his answer, in the opinion of counsel, or any part of it, is not appropriate or responsive, after his answer is given the counsel can move that it be stricken out, but don't interrupt the witness, please, in the middle of his answer.

Mr. HOPKINS. I beg pardon, sir; I have no desire to transgress the rule, and it was only in the interest of the question. I will undertake to abide strictly by Your Honor's admonition.

By Mr. HOPKINS:

Q. During that period of time the Government had possession of the Straight Creek Mine, you made official investigation, did you not, in reference to the removal of the 21 men in that mine who were killed in the original accident?

409 A. That is correct.

Q. Did you ever remove those men's bodies from that mine?

A. No; we did not.

Q. They still lie there in that mountain?

A. To the best of my knowledge and information they are still there.

410 Q. You were asked in reference to Government Exhibit 29, dealing with workmen's compensation and its applicability—that is, the applicability of that section to the Krug-Lewis Agreement dealing with workmen's compensation. I desire to ask you whether or not it is not a fact that many companies under Government possession have failed to give the coverage required under Section 3 of the Krug-Lewis Agreement and under your Coal Mines Administration directives?

A. I will have to answer that by saying that there could be. There are many companies that have complied, and that we know have complied. There are an appreciable number of companies that we have no way of determining as of this moment whether they have or whether they have not. Your latter number becomes smaller all of the time as we investigate.

Q. It is a fact, is it not, Captain, that the matter of proper and adequate coverage for workmen's compensation and occupational diseases under Section 3 of the Krug-Lewis Agreement has been one of constant dispute between the mine workers and the Coal Mines Administration?

A. No; I am not clear on that point at all. As a matter of fact, if there has been a dispute, it is news to me.

Q. Isn't it a fact that it has been a topic of discussion and request for enforcement on the part of the mine workers in almost every

411 conference they have had with you, both as Deputy and as Administrator?

A. No, not in every conference. If you are referring to the November 1 conference, yes, it was a subject for discussion in there, but I myself do not recall any previous conference on that subject.

Q. One of your deputies, I believe, Commander Doyle, on that particular occasion, on or about November 1, admitted that there were a number of companies that had not been checked up as to whether or not they even carried it?

A. That is correct.

Q. Have you as Coal Mines Administrator made any removals of Government-operating managers for failure to enforce or give the coverage under the workmen's compensation and occupational disease section?

A. Not to date.

Q. Captain, you were asked, in reference to Government Exhibit 31, which, as I recall, was the directive in reference to the payment of the amount of 5 cents per ton into the Health and Welfare Fund. Your directive—if I may have Exhibit 2, Mr. Clerk, please—dated July 29, 1946, provided, among other things, that the weights upon which the 5 cents per ton was to be paid would be railroad weights, did it not?

A. In brief, that is correct.

Q. That was issued over the objection of the mine workers, first registered with the Coal Mines Administration, was it not?

412 The COURT. May I ask you. Has that or has it not been gone over?

Mr. HOPKINS. No, sir; I do not think so, in that the Government has just offered this document.

The COURT. All right, sir. Proceed.

Mr. HOPKINS. I wanted to ask him in reference——

The COURT. I was under the impression that in previous cross-examination——

Mr. HOPKINS. Some reference may have been made to it.

The COURT. All right.

By Mr. HOPKINS:

Q. Is it not a fact that that basis for the weighing of the coal for the 5 cents per ton to the Welfare Fund was issued over the objection of the mine workers to the Coal Mines Administration?

A. That is correct.

Q. It was a matter of major dispute, was it not, sir?

A. It was, in my opinion.

Q. It was a matter of major dispute at all times subsequent to the issuance of this directive of July 29, was it not?

A. It was a very frequent topic of discussion and dispute.

Q. And it was an outstanding, unresolved dispute, was it not, on October 21, 1946?

Q. Did you or did the Coal Mines Administration enforce that directive, which provided, among other things, a place where the funds were to be paid? Did you enforce it as against all coal companies?

A. We directed that they make the payment—in cases, you mean, where the payment had not been made or where it was brought to our attention?

Q. Yes.

A. No; we reaffirm the directive, ordering the payment of such, and attempted to investigate why such payment had not been made.

Q. I direct your attention to what is known as the Carter Coal Company, which operates in West Virginia. Have they complied with your directive of July 29, 1946, as to the manner and place of payment of those funds so provided?

A. Not to the best of my knowledge—they have not.

Q. They have refused, have they not, to comply with your order?

A. They have refused, offering substitute plans for the direction of payment.

Q. And you have not enforced, sir, have you, as against the Carter Coal Company, the requirements of that order?

A. No, we have not.

Q. You have not removed your Government Operating
414 Manager for failure to comply, have you, sir?

A. No, we have not.

Q. He remains the same manager both before and after noncompliance by that Company?

A. He does.

Q. Adverting to your letter of October 21, 1946, addressed to the Mine Workers, which I believe is Defendants' Exhibit 1, counsel for the Government on redirect had you read a certain paragraph from that dealing with the proposal on your part for the appointment of an umpire to resolve the question of the vacation payment. Now, isn't it a fact that at all times up to that date, when you so suggested, the mine workers had been urging the acceptance by the Coal Mines Administration of the award made in Illinois? That is a fact, isn't it, Captain?

A. You are talking about the pro rata vacation payment, now?

Q. Yes, sir.

A. Yes, that is correct—that is, at all times after such an award had been made.

Q. That award was made, I believe, in the latter days of August of this year?

A. Yes; but we were not advised of that until, I think, September 9 by Mr. Lewis.

Q. Up until that time, you had not undertaken to——

Mr. Hopkins. I will strike that.

415 By Mr. Hopkins:

Q. Is it not true that from the time you were first made aware of the award in Illinois up to October 21, the Mine Workers had been pressing for the acceptance of such an award by the Coal Mines Administration?

A. Yes, they had.

Q. In reference to your testimony on redirect about the appointment of trustees under Section 4–A of the Krug-Lewis Agreement, is it not a fact, Captain, that during the month of June the mine workers were asking for the appointment of such trustee by the Government—to designate its appointee—that is a fact?

A. To the best of my knowledge, that is true.

Q. And the Mine Workers were pressing and asking for the appointment of a trustee in July, were they not, by the Government?

A. I am not clear in July, Mr. Hopkins, because both conferences were held with Mr. Lewis himself, and it is my memory that he was away on vacation during July and August.

Q. Put it this way, then, Captain: It is a fact that during July and August there was no appointment by the Government of its trustee?

A. That is correct.

Q. You testified, I believe, on redirect that Admiral Boyle
416 had been suggested as trustee to be named by the Government. On what date was that suggestion made?

A. I believe that was made by the Secretary of the Interior to Mr. Lewis on October 19.

Q. On October 19. So it is now your testimony that there had been no affirmative suggestion of the naming of a trustee by the Government from May 29 until October 19?

A. Of the Government's trustee?

Q. Yes, sir.

A. That is correct.

Q. You were asked a number of questions by counsel on redirect as to Section 6, on wages and percentage of increase, if any.

Now, I ask you a question, Captain: Is it not correct that Section 6, dealing with wages in the Krug-Lewis Agreement, was based upon the contract of April 11, 1945, which was carried forward into the new Krug-Lewis Agreement?

A. Yes, that is correct. That set the basic wages.

Q. And that that section standing alone, without the provisions of the old contract, carrying forward, could not have been performed?

A. No, because it was an additional amount, and it had to be additional over something, and the old contract carried forward to provide the basis.

Q. And administered in accordance with the provisions of the previous-existing contract?

417 A. That is correct.

Q. Which was carried forward into the Krug-Lewis Agreement?

A. That is correct.

Mr. HOPKINS. If the Court will indulge me, I think that will conclude our examination.

(Mr. Hopkins conferred with his associate counsel.)

Mr. HOPKINS. That is all.

Mr. SONNETT. The Government has no further questions.

The COURT. Gentlemen, in connection with the brief and other documents last offered by the Government, apparently as part of the redirect examination of the Captain, the Court—I presume you have copies of those papers, briefs, and so on?

Mr. HOPKINS. No, sir, we do not.

The COURT. Will you furnish them?

Mr. SONNETT. I shall be very happy to do so, if the Court please.

The COURT. This is my suggestion: that you furnish copies of those papers which you think are relevant to the issues of this case to counsel, so that they may have an opportunity of—Can you do it between now and tomorrow morning, or do you want more time?

Mr. HOPKINS. If he could point out the pages upon which he
418 relies, so as to eliminate the reading of the lengthy three or four portions, it would expedite it. We would undertake to respond as quickly as time would allow.

Mr. SONNETT. I have one other page of substance, I believe, if the Court please.

The COURT. Suppose you do this, if you think this is practical: Submit copies of the documents to counsel for the defendants and mark what you have already read and such other parts as you had in mind reading, and the Court will hear the defendants as to their admissibility tomorrow morning at 10 o'clock, or whenever the witness who is then on the stand completes his testimony. Is that satisfactory?

Mr. HOPKINS. I think that is satisfactory. We will undertake to comply, Your Honor.

The COURT. All right, gentlemen.

Mr. SONNETT. If the Court please, the Government would now like to make an offer of proof, for ruling by the Court, because should the proof be acceptable, certain mechanical preparations will be necessary during the luncheon recess.

The Government now offers to prove, by the testimony of Alfred O. Eth, of Paramount News, of Washington, D. C., that he is a sound engineer for Paramount News and that, as such, he participated in the taking of certain motion pictures of the defendant Lewis on or about May 29, 1946; that he has with him a film; and that on that film is a sound track, both of which accurately set forth both the
419 features and words of the defendant Lewis at that time and place; that there were two so-called takes of the scene; that in the first take the defendant Lewis said——

Mr. HOPKINS. If the Court please, the defendants do not want to get into the same position they were with your Honor a while ago by allowing the witness to go ahead, unless he is merely making identification of a document, and to read it into the record without objection. There are certain well-directed objections that we think can and should be made.

The COURT. Suppose you look at it, first.

Mr. HOPKINS. We do not want to be in the position of allowing it to go that far when it is merely for identification that he is making the offer now.

Mr. SONNETT. It was done, if the Court please, to make an offer of proof.

The COURT. He is contending that the Court should know something about the article before it can pass upon it. But suppose you look at it, first.

Mr. HOPKINS. Very well. Thank you.

(Mr. Sonnett handed papers to Mr. Hopkins.)

Mr. HOPKINS. If the Court please, after examination, briefly, of the offer made by the Government, the defendants, and each of them, desire to interpose the objection that it is not relevant to the issue involved before your Honor at this time.

420 However, sir, if your Honor finds that it is relevant, and overrules our objection, we stipulate the fact that such statements were made, in order to facilitate this Court without the use of

elaborate preparations. The subject matter will be stipulated as having been said upon that occasion, and it can be offered to the Court.

The COURT. Suppose you let me see it, will you, please?

Mr. HOPKINS. The Government now has it.

(Mr. Sonnett handed papers to the Court.)

The COURT. As I understand it, the defendants say that if this testimony is admissible, it will not be necessary to put a witness on the stand.

Mr. HOPKINS. Yes.

The COURT. If it is admissible at all, you agree that the statement was made?

Mr. HOPKINS. We stipulate that fact under the previous objection first made.

The COURT. I would rather wait, then, until after the recess, to pass upon it, because I have got to think about it a little. It will not be necessary to hold your witness, as I understand it?

Mr. PADWAY. No, not at all.

The COURT. Now, gentlemen, there is one other thing I want to call your attention to. Have the defendants and the plaintiff copies
421 of the testimony—copies of the record of November 25? You have copies somewhere, I suppose. I have it right here; I did not know whether you had it.

Mr. PADWAY. The Clerk has been good enough to hand us a copy. We will use this for the purpose of what your Honor is going to direct our attention to.

The COURT. Yes. I just want to direct your attention to something. The Court desires to have offered tomorrow morning certain statements made in that record, and the Court would call the reporter and ask him if he took the testimony and ask him if he transcribed the testimony correctly, and asked him the additional question, after he has read the testimony, whether or not the individual defendant, either in his individual capacity or in his representative capacity, made any comment on the statements. Now, the statements that the Court will make inquiry about begin on the eighth line from the bottom of page 5, Mr. Sonnett. That statement will go through to the second line of page 8. Then, beginning on page 10 at the fourth line, beginning "Mr. Hopkins," the statement will continue until the sixth line on page 15.

Mr. HOPKINS. Page 15, your Honor? Pardon me.

The COURT. Page 15, yes, sir.

The only other question the Court will ask the reporter is, Did the individual—did the defendant, John L. Lewis, either in his in-
422 dividual or his representative capacity, make any statement throughout the proceedings?

Now, doubtless counsel on one side or the other would make the same offer, but the Court does think it is material, and I am afraid it might be overlooked; that is the only reason it is taken up at this time.

Of course, the reason the Court makes this announcement is that either side may object to the testimony, and the Court gives you an opportunity to make your objection before the testimony is taken, if you see fit. Of course, the testimony is like any other: it is subject to cross-examination by both sides; and, in addition, of course, either side, if it things other parts of the record taken on November 25 are

properly a part of the case, will have an opportunity in the course of their introducing their testimony to introduce such proof as they think is relevant.

Mr. HOPKINS. I do not mean to interrupt your Honor at all, sir. Do I understand, as to the inquiry, that the Court undertakes or is desirous of adopting this procedure immediately upon return from recess?

The COURT. No, sir. The Court is going to do it tomorrow morning, in order to give you an opportunity to read those pages and see whether you have any objection before it is done.

Mr. HOPKINS. If I understand it, the Court is suggesting that he will put the reporter on the stand to verify the accuracy of statements made as transcribed?

423 The COURT. Correct.

Mr. HOPKINS. I was not quite clear, Your Honor, as to whether you had a moment ago adverted to the fact that you might also inquire as to whether certain statements had been made and were omitted, perhaps.

The COURT. No, the only question, outside of what the reporter wrote out, if he so testifies, will be the question whether or not the defendant, John L. Lewis, either in his individual or his representative capacity, made any comment upon those statements, or any of them.

Mr. PADWAY. Would that imply, if the Court please, counsel would be included in that?

The COURT. Sir?

Mr. PADWAY. If counsel made statements on behalf of Mr. Lewis?

The COURT. No, whether Mr. Lewis individually or in his representative capacity. You see, he is sued as an individual and in his representative capacity.

Mr. PADWAY. Yes.

The COURT. In other words, the practical question is whether he made any statement at all, personally.

Mr. PADWAY. Yes. Now, if we, upon reading this record, find that it is correct, and then we concede that it is correct, and that the reporter took it down and correctly transcribed it, that would satisfy Your Honor?

424 The COURT. And concede that Mr. Lewis made no comment.

Mr. PADWAY. Yes. I mean if those were the facts, we could just take it——

The COURT. There is no necessity for putting the witness on the stand.

Mr. PADWAY. That is what I had in mind. Well, we will read this in the afternoon or the evening and will be prepared.

The COURT. It will not be taken up until tomorrow morning.

Mr. SONNETT. If the Court please, may the Government merely state its theory upon which the document which Your Honor proposes to study during the recess is relevant?

The Government believes that the statement of the defendant Lewis at that time and place was relevant to show willfulness, insofar as this contempt proceeding is concerned, in that he there made statements inconsistent with the alleged right to terminate, which he asserted, and which Your Honor directed——

The COURT. Do you mean this document here?

Mr. SONNETT. Yes. I had not stated our theory of relevance.

The COURT. State it over again.

Mr. SONNETT. The Government's theory is that the document is relevant. The words are relevant because they tend to prove that the action of the defendant upon which the Government claims the defendant, or both of them, are in contempt was willful. We
425 think it goes to prove willfulness in that, although directed by this Court to take certain action with respect to canceling the notice of termination, the defendant did not do so, asserting the right to terminate the contract, although the defendant Lewis himself had stated publicly, at a prior time, as this proof will show, that the contract covered for the period of Government operation of the mines. Accordingly, we think it goes to prove and tends to prove willfulness on the part of the defendant.

The COURT. If you gentlemen have anything to say, I will hear you before we adjourn, as to the reason why you do not think it is relevant.

Mr. HOPKINS. I will undertake to state it this way, bearing in mind always the statement made to your Honor a few moments ago, that if your Honor holds it is not relevant, then we stipulate the fact.

This matter that the Government seeks to offer occurred on or about May 29 or May 30 of 1946, six or seven months prior to the issuance of any temporary restraining order, five or six months prior to the exercise by the defendants of their contractual right under their notice of October 21.

It is not pertinent or germane here to the narrow issue before this Court as to whether or not there has been any contempt, your Honor, of your Honor's order of November 18, 1946.

426 The COURT. What you say, as I understand it, is this: that this statement is merely an admission on the part of the individual defendant, John L. Lewis, that the United Mine Workers did enter into the Krug-Lewis Agreement, and that that is all it means.

Mr. HOPKINS. That is right, sir.

The COURT. Just a minute: That is all it means, but it does not mean or is not an admission that it has been violated in any way.

Mr. HOPKINS. That is correct.

The COURT. Is that what you say?

Mr. HOPKINS. That is correct, sir.

The COURT. Is it any more than an admission that the Agreement was entered into?

Mr. HOPKINS. That is all, sir.

The COURT. That is your position?

Mr. HOPKINS. Yes, sir.

The COURT. All right, sir.

Mr. PADWAY. At 1:30 we will probably want to stipulate or we may have something to say with respect to the ruling your Honor will make, but not as to the fact of these statements having been made by Mr. Lewis.

The COURT. Yes, sir—at 1:45, gentlemen.

(At 12:29 p. m. a recess was taken until 1:45 p. m. of the same day.)

427 AFTER RECESS

(The proceedings were resumed at 1:45 o'clock p. m., at the expiration of the recess.)

The COURT. Gentlemen, the Court is of the opinion that there is some question about the admissibility of this paper involving the statement made by the defendant John L. Lewis on May 29, 1946, and that its admissibility may depend upon future developments; the Court won't admit it at this time. The Court will permit the plaintiff to withdraw it and offer it at a later day if it sees fit.

Mr. SONNETT. The Government will be happy to do so, Your Honor.

The CLERK. Yes, sir.

Mr. SONNETT. I will call Mr. Genau.

Thereupon—

JOSEPH A. GENAU was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. What is your occupation, Mr. Genau?

A. Special Agent of the Federal Bureau of Investigation.

428 Q. How long have you been so employed?

A. Almost twenty-six and a half years.

Q. On or about November 23, 1946, were you present in the office of the United Mine Workers of America?

A. I was.

Q. Where is that office located?

A. 15th and Eye Streets, Northwest.

Q. Who was present with you?

A. Special Agent Rosser L. Nalls.

Q. Did you have in your possession at that time a copy of the New York Times?

A. I did.

Q. Do you have it with you?

A. Yes, sir.

The COURT. What was that date, Mr. Sonnett?

Mr. SONNETT. November 23.

The WITNESS. That is right.

(A newspaper was handed to Mr. Sonnett by the witness.)

Mr. SONNETT. I will ask the Clerk to mark this for identification as Government Exhibit No. 39.

(Thereupon, the newspaper referred to was marked "Government's Exhibit No. 39 for identification.")

By Mr. SONNETT:

429 Q. When you were at that office at that time, did you have a conversation with a person in the office?

A. I did.

Q. What was the name of the person?

A. Mr. K. C. Adams.

Q. Did you show Government's Exhibit 39 for identication to Mr. Adams?

A. I did.

(Thereupon, Government's Exhibit 39 for identification was handed to defense counsel by Mr. Sonnett.)

Q. Did you have a conversation with him?

A. I did.

Q. Will you state what he said and what you said?

Mr. Padway (interposing). Now, if the Court please, Mr. Adams has not been identified.

The Court. The Court sustains the objection.

By Mr. Sonnett:

Q. Did you examine the door of the office in which you had this conversation?

A. I did not examine the door closely, but I noticed "United Mine Workers' Journal" or some words to that effect thereon.

Q. In the course of your conversation with Mr. Adams did he indicate to you the nature and scope of his duties for the United Mine Workers of America?

430 A. He did.

Q. What, in that respect alone, did he say to you?

A. He stated that he was the editor of the United Mine Workers' Journal.

Mr. Sonnett. I renew the question, if the Court please.

By Mr. Sonnett:

Q. What did you say to him and he say to you at that time and place?

A. I asked Mr. Adams if he had presented copies of the letters from Secretary Krug to Mr. Lewis, and vice versa, to Louis Stark, of the New York Times.

I then submitted this copy of the New York Times, dated November 16, to him and he made a cursory examination and stated that he had no recollection of personally submitting copies of those letters to Mr. Stark, but added that copies of the letters had come to his office from the Heads upstairs who had approved them for publication and in the usual course copies of these letters were placed on the table in his outer office for access to the press.

Mr. Sonnett. I offer Government Exhibit 39 in evidence, if the Court please, pointing out in connection with the offer that this exhibit contains among other things the letter from John L. Lewis to Secretary Krug purporting to terminate the Krug-Lewis Agreement.

The Witness. May I make an addition to that?

431 Mr. Sonnett. Yes, surely.

The Witness. Mr. Adams farther stated that copies of these letters came from the Heads upstairs on the morning of November 15.

By Mr. Sonnett:

Q. And were released on what date to the press?

A. He placed them on the desk in his outer office.

Mr. Sonnett. You may inquire.

Mr. Hopkins. If Your Honor please, I understand the Government is now offering this into the record.

We would like to state for the record our objection, that it is repetitious in major instances. All the documents but one referred

to in this article are already in the record under the Government's own pleading.

The COURT. Which document is it that is not in, sir?

Mr. HOPKINS. It is a letter dated November—it does not show the date, but it is a letter from the Negotiating Committee, United Mine Workers of America, by John L. Lewis, President, addressed to the Secretary of the Interior.

"Dear Mr. Secretary."

The other matters in the paper are already in the record under the Government's own offer attached to the original complaint. In addition thereto, we have no objection whatever to the letter from

432 Mr. Lewis to the Secretary. The original is in the possession of the Government. At least, it is in the possession, presumably, of Secretary Krug.

We see no purpose in offering a newspaper here, sir, that is repetitious in its major part.

The COURT. What is the purpose of this offer, sir?

Mr. SONNETT. The purpose of this offer, if the Court please, is to show that the publication of the document in question, namely, the so-called termination notice given by the defendant Lewis, was as a result of action on the part of the United Mine Workers of America.

Mr. HOPKINS. This exhibit, sir, that is offered does not show that on its face.

Mr. SONNETT. It was a document shown to an employee of the United Mine Workers in connection with a conversation which this witness had with that representative of the United Mine Workers and, as such, tends to confirm the testimony of the witness.

Mr. HOPKINS. We offer, Your Honor, the objection that it is hearsay twofold, twice removed.

If Government desires to prove any statement to the representative of the New York Times, I suppose that representative is available to the Government, but this witness is not capable, in our opinion, of making admissible hearsay documents of this character.

433 The COURT. One difficulty the Court has—I don't see the purpose of it.

The Government has, according to the statements made by counsel, Mr. Hopkins, the Government has already introduced these letters into evidence with the exception of one, which it says the Government has in its possession.

It could offer it if it saw fit to do so.

Is that a fact? Have you that letter?

Mr. SONNETT. That is correct, Your Honor, but the fact that we are intending to establish by this proof is that the publication of these letters or their release to the public was done by the defendants herein and not by anybody else.

Mr. HOPKINS. This does not prove that, Your Honor. This exhibited newspaper is pure hearsay on its face, twice removed.

Mr. SONNETT. We are not offering the newspaper, if the Court please, for its contents. We are offering the newspaper because it was shown by the testimony of this witness to an employee of the defendant United Mine Workers of America.

The COURT. What you say now, sir—I mean, what I understand your offer now is, that it is to show simply not the fact of the letters,

because you have already offered evidence of the facts, but of the further fact that they were released to the press and the public
434 by the defendants and not by the Federal Government.

Mr. SONNETT. That is our purpose, Your Honor.

The COURT. Now, what is your view about the bearing that that fact has upon the issues in the case?

Mr. SONNETT. Because we think that the public release and distribution of this notice of termination—of alleged termination—under the proof which we will introduce or offer, was equivalent to a call to the miners to strike in the seized mines.

Mr. PADWAY. If that be the case, may it please the Court, then——

The COURT. Just one minute, Mr. Padway.

Was it your claim that the publication in the newspapers was a notice to them, or that they received a notice?

Mr. SONNETT. Both, Your Honor. That the publication in the newspapers was notice to them, and to the rest of the public, and, secondly, that they did receive such notice in specific cases concerning which we will offer proof.

The COURT. I will hear you, Mr. Padway.

Mr. PADWAY. I was going to say this. Where is the materiality of this paper? I notice it is dated November 16, 1946. Your Honor made no order until November 18.

Now, are we to infer by the Government's contention
435 that Mr. Lewis or anyone else was inhibited or prohibited or enjoined from issuing anything? Now, that is assuming that Mr. Lewis or any of their employees released it. I am not making that concession.

The COURT. Assuming what, sir?

Mr. PADWAY. I say only assuming, without conceding, that the United Mine Workers or any of its employees released these letters. What difference does it make?

The issue here is November 16, 1946.

There was nothing to prohibit that. There had been days before discussions of a coal strike in the papers back and forth.

What materiality has it to the issues in this case?

The COURT. Mr. Padway, I don't follow you on that argument if it is with respect to the issuance of that notice which induced the Government to institute proceedings in the nature of a mandatory injunction for the revocation of the notice.

Mr. PADWAY. It is not what induced the Government to ask for an injunction. It is a question of the fact. Did it ask for an injunction? Did the Court issue an injunction?

What happened to the issuance of it?

436 The COURT. The Court will overrule that objection, Mr. Padway.

Mr. PADWAY. If this is going to be admitted in evidence then I want to object——

The COURT. It is admitted in evidence, Mr. Padway, for the sole purpose of evidence that the United Mine Workers of America did issue a notice that the Krug-Lewis agreement between the Federal Government and the United Mine Workers was no longer in force, and was terminated. Is that your purpose?

Mr. SONNETT. That is our position, if the Court please.

The COURT. All right; the Court admits it for that purpose.

Mr. PADWAY. If it is going to be admitted at all I should like the record to show that there are news items pertaining to the coal situation on the first page, in a three-column spread, and also other news items below the columns that contain the letters, we ask that the Court state on the record that they are not being admitted, the comments of newspaper reporters and writers, and that the record be not encumbered with a matter of that nature.

The COURT. The Court thinks that a proper suggestion.

437 Mr. SONNETT. I agree with it, Your Honor, and the Government's offer is intended to relate to that page of the newspaper and to that portion of that page which contains the text of the letters in question.

The COURT. All right, sir.

Mr. SONNETT. You may inquire.

Mr. HOPKINS. No questions, Your Honor.

The COURT. Are you through with the witness?

Mr. SONNETT. I am through with the witness; yes.

(Witness excused.)

Mr. SONNETT. If the Court please, the Government offers in evidence Government's Exhibit 40, consisting of photostatic copies of the United Mine Workers Journal, certified by the librarian of the Library of Congress, to the extent that certain portions of the documents to which I shall now refer are offered specifically by the Government:

The first is that portion of the United Mine Workers Journal of June 1, 1946, at page 10.

The second is that portion of the United Mine Workers Journal of August 15, 1944, at page 5. Both of these are with respect to the "No contract, no work" policy of the United Mine Workers as alleged in our complaint.

The COURT. What is the date?

Mr. SONNETT. The date of the first one offered is June 1, 1946, at page 10. The second is August 15, 1944, at page 5.

438 Mr. HOPKINS. 1944?

Mr. SONNETT. That is right.

Mr. HOPKINS. Reserving the right to object, Your Honor, we would like to examine the documents which we now understand are being tentatively offered.

Mr. SONNETT. May the record further indicate, Your Honor, that our offer is limited to the portions of those papers circled in red to which I have directed counsel's attention.

Mr. HOPKINS. Do I understand Government now makes offer of the exhibits?

Mr. SONNETT. Those portions circled in red to which I have directed your attention, Counsel; yes.

Mr. HOPKINS. To which, for the record, Your Honor, we object on the ground it is not relevant to the issue now before this Court; the date of one excerpt so offered being June 1, 1946; the date of the other excerpt being August 15, 1944. We object to the introduction of them on the ground of relevancy to the issue here.

The COURT. Let me see them, please, sir.

(Counsel for the Government hands documents to the Court.)

The COURT. I only see one red circle here. Is there more than one?

Mr. SONNETT. There is another, Your Honor. The
439 other edition has a tab on it, if I may point it out to the Court. It is on a different page.

The COURT. All right. Gentlemen, the Court doesn't have much difficulty here. These exhibits are objected to on the ground that they are not relevant to the issues in this case. The Court overrules the objection.

Mr. HOPKINS. If the Court please, then do we understand that the record won't be burdened with the whole exhibit but only the excerpts as such?

Mr. SONNETT. That is all that the Government offered, if the Court please.

Mr. HOPKINS. Thinking of the size of the record here, and if that could be done that would be helpful in holding down its volume.

Mr. SONNETT. May I, for the sake of the record, if the Court please, read from page 10 of the United Mine Workers Journal for June 1, 1946, in part as follows:

"The economic creed of the UMWA—'No contract, no work'—effectively employed, constitutes an educational institution. A 'dim-out' is a 'lockout.' But the tuition in that school is pretty costly for both the miners and the public. Coal miners cannot afford to pay the toll at every period of contract expiration to reeducate the pavement peasantry of our big cities, a few small towners, and
440 some ruralities who have always been too prone to let the miners fight their own battles alone."

The second portion is from the issue of August 15, 1944, page 5, an article by John L. Lewis, which states in part:

"It was the Policy Committee, by unanimous vote, that rejected the jurisdiction of the War Labor Board and demanded the resumption of collective bargaining. The demand was not heeded, and when the thirty-day extension ended on April 30, the miners laid down their tools. This is our historic and automatic procedure. For 53 years a contract has been our protection against rapacity and ill faith. No contract, no work. No stoppage order ever goes out. If a new agreement has not been signed before the expiration of the old, the men quit. Nevertheless, we were not careless of the national interest, for we knew that there were 79,000,000 tons of bituminous coal in storage."

Mr. SONNETT. Call Lieutenant-Commander Acheson.

Thereupon—

Lieut. Commander HAMILTON ACHESON was called as a witness for and on behalf of the Government; and, having been first duly sworn, was examined and testified as follows:

441 DIRECT EXAMINATION

By Mr. SONNETT:

Q. Commander Acheson, what is your occupation?

A. I am Officer in charge of the Iowa Subarea Coal Mines Administration.

Q. And you are a Lieutenant Commander of the United States Navy, are you not?

A. Navy Reserve.
Q. On active duty as such?
A. Yes, sir.
Q. Where is your office located in Des Moines?
A. Room 121, Old Federal Building, Des Moines.
Q. And what are your duties?
A. I am to carry out the instructions of the Officer in Charge at Chicago.
Q. On or about Friday, November 22, were you present at the Jensen Coal Company's Fraser Mine at Fraser, Boone County, Iowa?
A. I was.
Q. I show you Government's Exhibit 41 for Identification, Commander, and ask you whether you saw that at that place; and if so, where?
A. I did. It was on the bulletin board in the wash house.
Q. Do you of your knowledge know who posted it there?
442 A. I do not.
Q. Was it posted there pursuant to any instruction or order of yours?
A. It was not.
Mr. SONNETT. I offer it in evidence.
Mr. HOPKINS. May we see it?
(Government counsel hands exhibit to counsel for the defendants.)
Mr. HOPKINS. No objection, Your Honor.
(Envelope and letter addressed to Richard Brown marked "Government's Exhibit No. 41" and received in evidence.)
Mr. SONNETT. If the Court please, Government's Exhibit 41, in evidence, consists of an envelope with an air-mail stamp, Washington, D. C., November 16, 1946, 2 P. M., addressed to Richard Brown, 1039–13, Fraser, Iowa, with a return address as follows: John L. Lewis, United Mine Workers Building, Washington 5, D. C.
The letter is a letter on the stationery of the United Mine Workers of America dated November 15, 1946, reading as follows:
"*To the Members of the United Mine Workers of America, Greetings:*
"The following is the exact text of a letter sent to the Secretary of the Interior, in charge of Coal Mines Administration:
"NOVEMBER 15, 1946.
"Honorable J. A. KRUG:
443 "*Secretary of the Interior,*
"*Washington, D. C.*
"DEAR MR. SECRETARY: In accordance with the provisions of the Krug-Lewis agreement dated May 29, 1946, the United Mine Workers of America on October 21, 1946, officially requested a joint conference of the accredited——
The COURT. Officially did what?
Mr. SONNETT:
"officially requested a joint conference of the accredited representatives of the joint contracting parties to said agreement. Such conference convened on November 1, 1946.
"15 days have now elapsed since the beginning of said conference; the United Mine Workers of America, exercising its option,

hereby terminates said Krug-Lewis agreement as of 12 o'clock p. m. midnight, Wednesday, November 20, 1946.

"Yours truly,

"UNITED MINE WORKERS OF AMERICA,
"By JOHN L. LEWIS, *President*.

"The foregoing is for your official information.

"Sincerely yours,

"JOHN L. LEWIS, *President*."

444 Mr. SONNETT. You may inquire.

Mr. HOPKINS. We have no questions.

(Witness excused.)

445 Thereupon—

Lieutenant Commander R. H. BEHNKE was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. You are a Lieutenant Commander of the United States Naval Reserve?

A. Yes, sir.

Q. On active duty?

A. Yes, sir.

Q. What is your present assignment, Commander?

A. I am Officer in Charge of Area 1, Sub-Office of Fairmont, West Virginia, of the Coal Mines Administration.

Q. What are your duties there?

A. To carry out the orders of the Area Officer in Charge.

Q. How long have you been engaged in that occupation?

A. Since the 28th of May of this year.

Q. On or about November 19, 1946, were you at the Pittsburgh-Consolidated Company Mine 98, located near Enterprise, West Virginia?

A. I was.

Q. I show you Government Exhibit 41, that portion of it
446 which is a letter, and ask you to examine it and state whether at the time and place mentioned by you you saw such a letter.

Mr. HOPKINS. If your Honor please, if I may interpolate here, if counsel for the Government is offering an identical exhibit to that which he offered by the preceding witness, the defendants are willing to stipulate that the notice addressed to the Mine Workers, as set out in the previous exhibit, was sent out on November 15, which is the date appearing on the top of that circular. If he is offering now the same thing in repetition of what he has previously offered, we agree to stipulate that that notice or communication or circular did go out from the Mine Workers' office on November 15.

The COURT. When you say "Mine Workers," do you mean in just this one instance, or in all instances?

Mr. HOPKINS. In this instance. There is no need to go beyond that. I do not know how far he is going to offer anything else.

The COURT. I just want to understand what you said; that is all.

Mr. SONNETT. If the Court please, I do not know whether counsel for the defendants' offer to stipulate will suffice or not. If the stipulation is a stipulation to the effect that that notice was posted, in addition to the places already mentioned, at Fairmont, West Virginia——

Mr. HOPKINS. We make no stipulation there. I am merely
447 offering to stipulate that the circular went out from the Mine Workers' membership on November 15, 1946.

Mr. SONNETT. That much the Government is quite willing to take, but it is insufficient to meet the proof which we propose to offer.

Mr. HOPKINS. For what other purpose, may I inquire, your Honor, is it desired to offer it?

Mr. SONNETT. We desire to prove——

The COURT. Just one minute. The Court is not sure he understands the scope of your admission, sir.

Is it your admission that a general notice was sent out to bituminous coal operators who were under the jurisdiction of the United Mine Workers of America, or simply that this particular notice was sent out?

Mr. HOPKINS. On November 15. We offer to stipulate, your Honor, that general notice addressed to the members of the United Mine Workers of America, quoting the letter of November 15 to the Secretary of the Interior Krug, was on November 15, 1946, sent out by the United Mine Workers of America to its membership.

Mr. SONNETT. The Government accepts that stipulation, if the Court please.

I have no further questions, Commander.

Mr. HOPKINS. No questions on the part of the defendants.

(The witness left the stand.)

448 Mr. SONNETT. Does the stipulation, if the Court please, extend to Government Exhibit 41—that is, to the text of it—which is in addition to the exact text of the Krug-Lewis Agreement?

The COURT. You may ask him.

Mr. HOPKINS. Yes.

Mr. SONNETT. Then, the Government is happy to accept the stipulation, if the Court please.

The COURT. Did you say something was in addition?

Mr. SONNETT. There is an introductory sentence and a closing sentence, if the Court please, in the letter, in addition to the exact text of the termination or alleged termination notice.

The COURT. I understand.

Mr. SONNETT. Would you call Dr. Parker, please?

Thereupon—

Dr. GLENN L. PARKER was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Dr. Parker, what is your position?

A. Chief of the Prices and Markets Subsection of the Coal Economic Division of the Bureau of Mines.

Q. Of the Department of the Interior?

449 A. That is right.

Q. What is your educational background?

A. I received a B. A. degree from the University of Texas in 1930, an M. A. degree in 1931, and a Ph. D. degree——

By the COURT:

Q. They stopped the Latin then? It used to be A. B. and A. M.

A. That is correct.

Q. All right.

A. And a Ph. D. degree in 1939, the last of which degrees was in economics.

By Mr. SONNETT:

Q. What has been your experience, Doctor?

A. From 1935 to 1937 I taught economics in the University of Texas. From 1937 to 1939 I taught economics and finance in the University of North Dakota. From 1939 to 1941 I taught economics and finance in Ohio University.

On November 15, 1941, I came to work for the Bituminous Coal Division of the Department of the Interior, and I stayed with the Bituminous Coal Division until the expiration of the Act, August 23, 1943.

During that time I served as an assistant to the chief economist of the Economic Branch—part of the time—and the rest of the time as an analyst for the Economic Branch.

On August 24 I started work for the Solid Fuels Administration as chief of the Price Unit, and then in May, 1944, I became chief of the Prices and Markets Subsection in the Bureau of Mines.

450

451 Q. What are your duties in your present position, Doctor?

A. To make economic studies of the bituminous coal industry, including such things as production, consumption, and various other requirements; stocks, employment, prices, costs, distribution.

Q. Doctor, in your official capicity, have you examined the information available to you with respect to bituminous coal production in the United States during the years 1945 and '46?

A. I have.

Q. And have you prepared a chart that sets forth accurately that information in graph form?

A. I have.

Q. Have you also, Doctor, prepared a chart showing employment in the bituminous coal mines in the United States during the year 1946 up to approximately the middle of October?

A. I have.

Q. Have you similarly prepared a chart showing the daily United States production of bituminous coal and the number of miners reported to be idle covering the period November 1 up to approximately November 23, 1946?

A. I have.

452 Mr. SONNETT. I would like, if the Court please, to offer these charts in evidence, and because of their size, to ask the Marshal to put them on the blackboard so that counsel can examine them and the Court simultaneously.

Mr. HOPKINS. If Your Honor please, as I understand the offer of exhibits by Government just made, they are statistics with reference to coal production and coal consumption and the number of men employed, etcetera. We most respectfully object, for the record, Your Honor, to their admissibility.

They are neither pertinent, germane, nor relevant to the issue on trial before Your Honor at this time.

If they are relevant at all, they must, per se, become relevant upon the trial of the case, to-wit, the declaratory judgment proceeding, the action in chief as filed by the Government here.

We are not trying a preliminary injunction. We are not trying this case on its merits under the bill of complaint, nor the declaratory judgment. The narrow issue before Your Honor is one of contempt, we respectfully submit. These documents and exhibits are neither relevant, germane, material, or pertinent.

The COURT. Mr. Hopkins. You see, the Court ruled on your motion to vacate the rule to show cause, the Norris-LaGuardia Act did not apply.

453 Now, on tomorrow morning the Court—as the Court has notified counsel—will offer evidence tending to show that the defendants did not obey the provisions of the restraining order passed by the Court.

Now, then, if this testimony which the Court intends to offer tomorrow morning establishes that fact, that would appear to leave the defendants in the position at least of a technical contempt of court or a violation of the restraining order.

So that if your position now were correct, there is very little in this particular case to be shown on either side.

Now the Court is admitting this sort of testimony—and the testimony the Court admitted for you on cross-examination last week—for the purpose of showing the extent of the contempt.

I don't mean that that is necessarily the only purpose because the Court has not passed actually or mentally on the question of contempt yet, but certainly the extent of the contempt, the kind of the contempt, the consequences of the contempt, if there was one, are all relevant to the question of what the punishment should be if there was a contempt.

Now, that is what I suppose you are offering it for.

Mr. SONNETT. That and in addition, Your Honor, to demon-
454 strate to this Court by witnesses subject to cross-examination the irreparable injury against the continuance of which we seek also a temporary injunction.

The COURT. The irreparable injury and the extent of the contempt amount to the same thing.

Mr. SONNETT. Yes, Your Honor.

The COURT. The Court overrules your objection, gentlemen.

(Thereupon, the charts referred to were marked "Government's Exhibits for identification 45, 46, and 47" and were thereupon received in evidence.)

By Mr. SONNETT:

Q. Doctor, examining that chart, which is Government's Exhibit 45, will you state to the Court and point out what information it conveys?

A. This chart, the upper section of this chart, shows the production of bituminous coal by weeks for 1945 in the black line. The red line shows production by weeks for 1946, and the green line shows production by weeks for 1946 of mines that were under seizure on the 15th of November, 1946.

Q. The period, Doctor, at which both the red and the green lines dropped down almost to zero on that chart is what period?

A. That is in April.

Q. Of what year?

455 A. It is the weeks ending April 6, 13, 20, 27, and the 4th of May and the 11th of May.

Q. Of what year, Doctor?

A. 1946.

Mr. SONNETT. All right, will you place the next one before the witness and Court, gentlemen, please?

(Thereupon, Government Exhibit 46 was placed in an elevated position before Court and counsel.)

By Mr. SONNETT:

Q. Doctor, will you state for the Court what chart 46, Government's Exhibit 46, demonstrates?

A. This chart shows the employment in bituminous coal mines in the United States, average monthly employment, that is. The black line shows all mines and the red line shows mines that are under seizure as of November 15, 1946.

Q. Now, the sharp drop in that chart, Doctor, in the middle of April 1946, indicates what in terms of number of employees in the coal mines during that period of 1946?

A. It shows that there were very few men at work during April. The total, if you could read the chart that accurately, would show 62,000.

The other line is only a part of that.

456 Mr. SONNETT. Now, gentlemen, can we have the next chart put up before the Court and the witness?

(Thereupon, Government Exhibit 47 was placed in an elevated position before Court and counsel.)

By Mr. SONNETT:

Q. Referring, Doctor, to Government's Exhibit 47, will you state what that chart demonstrates?

A. Government's Exhibit 47 shows two things for the period November 1 through 23, 1946. It shows the daily production of bituminous coal on the red line and on the black line it shows the number of miners reported idle.

Q. Now, does that chart show, Doctor, that on November 20, 1946, the number of tons of coal, bituminous coal, produced fell sharply and continued to fall and the number of miners reported idle continued to rise abruptly?

A. That is correct. It shows that.

Q. Does it show the number of miners idle on or about the 23rd of November 1946?

A. Yes, sir, it does.

Q. And how many, approximately, were reported idle at that time?

A. That was about 340,000.

Q. And how many tons of coal were produced at that time?

A. A little over 200,000 tons.

457 Q. Doctor, on the basis of your official experience, are you able to state what, in your opinion, is the importance of coal, bituminous coal, to the economy, health, and safety of the nation?

A. Yes, sir.

Q. Will you state what your opinion is and furnish your reasons for that opinion?

Mr. HOPKINS. To which, if Your Honor please, the defendants respectfully interpose an objection.

This witness has not shown himself qualified as an expert on the question of the impact on the economy of the whole United States as to the use of coal and the time of its use. I further suggest, Your Honor, that that is neither pertinent, germane, nor relevant.

The COURT. Your view is that the general public, insofar as the evidence shows, are as well able to estimate the effect of the coal shortage as this witness.

That is what you are saying, isn't it?

Mr. HOPKINS. I just submit that this witness—the question is asking for the conclusion of a witness who has not qualified himself as being competent to testify on it.

The COURT. You and I have said the same thing, I suppose. You have said it a little differently.

I think probably the objection is well taken, sir.

458 Mr. SONNETT. It is our view, most respectfully, Your Honor, that this witness has been qualified as an expert. Should counsel for the defendants desire to cross-examine him as to his qualifications, I am happy to yield to them at this time for that purpose.

The COURT. Well, suppose you examine him further, if you desire, as to his qualifications on the question of the economic effect of this depletion in the supply of coal, if it continues.

By Mr. SONNETT:

Q. Doctor, what were the coal supplies on hand as reported by the official information in your possession on November 20, 1946?

A. About 76,000,000 tons.

Q. Now, as a matter of regular official business have you, while in the Government employ, received information relating to the amount of bituminous coal on hand at various times.

A. Yes, sir.

Q. And have you in the matter of the performance of your official duties had occasion to learn the purposes for which that bituminous coal was used by the nation?

A. Yes, sir.

Q. How do you get that information, Doctor, in the course of your official business?

459 A. Well, the Bureau of Mines receives reports from various consuming groups; some of them directly from those consuming groups and some of them through such organizations as the Association of American Railroads and the Federal Power Commission.

Q. Are you able to state on the basis of your past experience, including your experience during April in 1946, what the probable rate of

production of bituminous coal from now on will be, assuming that the current work stoppage continues?

A. Yes, sir.

Q. What, in your opinion, will that production be?

A. It would be about 658,000 tons a month—I mean a week.

460 Now, Doctor, are you able to state what percentage of the normal production of the bituminous coal in this country that production represents?

A. On the basis of very recent production figures—that is, just before the current stoppage started—I would say it would be around about twelve and a half million tons a week and that that would figure out to be about five and three-tenths percent.

Q. Now, Doctor, in the course of your official duties in the past, have you received information as to the requirements of various industries for bituminous coal?

A. Yes, sir.

Q. On the basis of that information and on the basis of your expert opinion, what would be the normal requirements of bituminous coal over the next three months for total consumption in the United States?

A. It would average for the next three months not quite 54 million tons a month.

Q. How long, in your opinion, would the supply of bituminous coal now available and to be produced last, assuming continuance of the current work stoppage and assuming the use of coal at a minimum rate of usage?

Mr. HOPKINS. If the Court please, before he answers that, I should like to interpose this objection. Counsel is asking the over-all

461 question as to how long certain coal stocks would be available assuming normal consumption. We object to that on the ground that this witness has not stated, and neither does he undertake, so far as we understand him, to state, that he knows where all these supplies are, and whether stoppage would occur in Iowa or Pennsylvania or in X town in Alabama. In other words, coal stocks are not evenly divided.

Now, if counsel is asking the question as to how long coal stocks will last, we submit that that is not a proper question here unless this witness further qualifies himself as to the location of these stocks.

The COURT. Well, of course, there may be some validity in that, but transportation facilities in the country are of such a character that coal has to be taken from one place to another. I suppose it could be done, Mr. Hopkins. Isn't that true?

Mr. HOPKINS. I am sure that is true in the normal course of events. I merely point out here, again, that we do not think any of this is pertinent or relevant for the additional reason that he is asking for the pure conclusion of the witness here based upon only general information rather than specific.

The COURT. The Court does not agree with you, sir. Proceed.

Mr. SONNETT. Mr. Reporter, will you please read the last question?

462 (The last question was read by the reporter as follows:)

"Question. How long, in your opinion, would the supply of bituminous coal now available and to be produced last, assuming con-

tinuance of the current work stoppage and assuming the use of coal at a minimum rate of usage?"

The WITNESS. Until about March 1, 1947.

By Mr. SONNETT:

Q. What would happen then, Doctor?

A. Well, the economy would suffer a collapse at that time.

By the COURT:

Q. Do you mean, Doctor, that if the economy used all the coal that it would desire to use under normal conditions of production, the present supply of coal would last until March?

A. No, sir; he asked me——

Q. I am asking you the other question.

A. Well, it would quite obviously run out much sooner than that.

Q. Have you any definite opinion, based on facts, as to when it would run out?

A. Well, of course, the coal stocks are unevenly distributed, and it might be that in the normal course of events some consumers would still have considerable stocks while others would be completely
463 out. Now, if it were all to be treated as a pool and everybody were to use all the coal he normally would use, then the stocks we had on hand on November 20 would last about 37 days.

The COURT. Proceed, sir.

Mr. SONNETT. I have no further questions, if the Court please.

You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, your Honor.

Mr. SONNETT. No further questions.

(The witness left the stand.)

Mr. SONNETT. Call Dr. Hauser, please.

Thereupon—

Dr. PHILIP HAUSER was called as a witness on behalf of the United States and, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Dr. Hauser, what is your position?

A. I am Assistant Director of the Census Bureau, and I am detailed to the Department of Commerce as Assistant to the Secretary.

Q. What has been your prior experience, Doctor?

A. I have been in Government service for about 12 years. Before that I taught at the University of Chicago and was connected
464 with a number of research projects—social science and research work—and occupied various other professional posts before coming into the Government service.

Q. Will you state, Doctor, what your prior governmental experience has been prior to your present assignment?

A. Yes. I was Assistant Director of the Census Bureau for about three or four years; before that, Assistant Chief of the Population Census—housing census—during the decennial census period.

Q. What is your educational background, Doctor?

A. I have a Ph. D. from the University of Chicago.

Q. In the course of the performance of your official position, Doctor, does there come to you regularly official information of the Department of Commerce with respect to the commerce of the country?

A. Yes; various reports prepared by the constituent offices and bureaus of the Department come to my office, generally for analysis and assembly for the Secretary of Commerce.

Q. On the basis of those reports and your past experience, Doctor, are you able to form an opinion on the question of the dependence of the industry of the United States on coal production?

A. Yes. I think it rather clear that two of the rather outstanding characteristics of our economy make it peculiarly vulnerable to the stoppage in coal production.

465 In the course of the years, our economy has grown greatly dependent on machines in lieu of manpower and is, therefore, dependent on sources of energy to make the machines run.

Also, with the extreme division of labor we have, there is great interdependence of every part of our economy upon the other. There is a long chain of supply between raw materials, on the one hand, and finished consumer good or service in the hands or available to the consumer, on the other, and that long chain of supply is only as strong as the first link which breaks.

Now, without question, coal is a very fundamental link in that long chain of supply, both as a source of energy and as a basic industrial material.

Q. Doctor, on the basis of the official information received by you, can you state what percentage of all the energy produced in the United States is produced from coal?

Mr. HOPKINS. Just a second. For the purposes of the record, if Your Honor please, let the defendants' objection to the question be stated; that this testimony is neither germane, pertinent, nor relevant to the main issue of the matter now before Your Honor, and we respectfully object to its admissibility for these reasons: The main issue, the narrow issue now before Your Honor being one of alleged contempt. Therefore, Your Honor, we submit again that the matters here, if admissible at all, are admissible upon the trial of the case in chief and not on the narrow issue now before Your Honor, and

466 we object to its relevancy.

The COURT. I will overrule the objection. Proceed.

Mr. SONNETT. Mr. Reporter, before you go, will you read the question?

(The last question was read by the reporter, as follows:)

"Question. Doctor, on the basis of the official information received by you, can you state what percentage of all the energy produced in the United States is produced from coal?"

467 A. Yes. Despite the increasing importance of natural gas and petroleum and waterpower, about 43 percent of all energy produced in the United States today comes from bituminous coal.

By Mr. SONNETT:

Q. Can you, by reference to the official information available to you, and by reference to certain of the basic industries in the country, state the extent to which various of the basic industries of the country are dependent upon coal?

A. Well, three of our most basic industries would certainly be the railroads, the utilities, and steel.

These industries may be called basic primarily because much of the rest of our industrial structure is dependent upon the functioning of these three industries. The dependence of these basic industries on coal is attested to by the fact that about four-fifths of all energy used in driving locomotives, for example, on Class 1 railroads is derived from bituminous coal.

About four-fifths of all fuels and energy-producing material used in the production of steel is derived from bituminous coal.

Over half of all energy used in the production of electric power by the utilities is derived from bituminous coal.

468 About four-fifths of all energy obtained from fuel for electric power is derived from bituminous coal.

The dependence of these industries on coal is further attested to by the fact that over 80 percent of Class 1 railroads would have to shut down within 60 days.

Over three-fifths of the utilities, and steel both, would have to shut down in 60 days because of their dependence on coal as a source of energy.

Q. Can you state, assuming a continuance for 60 days of the current work stoppage, what would be the effect on employment generally?

A. Yes. We have made some estimates of the impact of a continued coal stoppage on the economy.

We estimate that at the end of a 60-day period there would be a decline in total production of about 25 percent, estimated on a conservative basis, and that would be accompanied by an unemployment of 5,000,000 full-time workers. Of course by the end of that period the effect would be snowballing and would be accumulating upward at a very rapid rate.

Q. On the same assumption, namely, a continuance of 60 days, can you estimate what would be the drop in the annual rate of national income?

A. Yes. The national income which is our best basic measurement of over-all economic activity would, within 60 days, decline from
469 a present rate of approximately 170,000,000,000 per year to a rate of 150,000,000,000 per year.

Q. And what would be the monthly rate of loss of income paid to workers resulting from a 60-day stoppage?

A. It would conservatively amount to a loss of approximately a billion a month, at the rate of a billion a month, in wages and salaries by the end of the 60-day period, and rapidly mounting.

Q. The total loss of national income during the first 60 days, assuming a continuance of the current work stoppage, Doctor, would be, in your opinion, what?

A. The total loss in national income, the decline in rate from 170 to 150 billion would amount to an average rate of decline of about six or seven billion, and, for the two months' period would result in a net loss of around a billion to a billion and a quarter dollars during the first 60 days. That would be a fraction of the loss in total national income as a result of a prolonged coal shortage.

Q. Doctor, are you familiar with the requirements of industry in terms of reconversion from wartime to peacetime production?

A. Yes.

Q. Can you on the basis of your familiarity with those requirements state what would be the effect upon reconversion, assuming a continuance of the current stoppage?

470 A. In general, yes. The present stage of our industrial activity—as you know we are just coming out of the most severe industrial dislocation in the history of our economy, and——

Mr. HOPKINS. If the Court please, not intending any disrespect to the witness, and not intending to object, but it is apparent that the question asks for and is receiving a most speculative answer.

Statements of fact are one thing, and pure speculation in the realm of hearsay, and in futuro occurrences that no man conceivably can know all about, we submit are pure speculations, conclusion of the witness, and calls for a pure opinion only, not based upon information that is now available but can only become available in futuro.

The COURT. I am beginning to wonder myself whether the witness hasn't gone as far as he should. What do you think, Mr. Sonnett?

Mr. SONNETT. I am willing, if the Court please, to rest at this point with this witness.

The COURT. All right.

Mr. SONNETT. You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, Your Honor.

(Witness excused.)

Mr. SONNETT. Will you call Mr. George C. Haas?

471 The COURT. The Court will take a five-minute recess at this point.

(Short recess.)

472 Thereupon—

GEORGE C. HAAS was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Mr. Haas, what is your position?

A. I am Director of Research and Statistics of the Treasury Department.

Q. And as such, what are your duties?

A. I have general charge of matters relating to fiscal analysis, and among them are the estimating of the Federal revenues. Estimates are made for the President's Budget messages and for various uses in the fiscal operations of the Treasury Department.

Q. On the basis of your official experience, and the information which you received in the course of your official duties, can you state whether, in your opinion, there would be any effect on Federal revenue resulting from a continued stoppage in bituminous coal production?

Mr. HOPKINS. Before you answer, if it please the Court, the defendants desire to interpose the objection that this is not material, the answer sought to be elicited under the question just propounded

473 because it is not material to the issue before Your Honor. It is not relevant.

The narrow question being here, as has been previously stated, we respectfully submit over that objection, this information in the answer now sought is neither relevant, nor material, nor germane.

The COURT. Mr. Hopkins, the Court does not know what testimony will be developed. The Court has not any idea what testimony will be developed by the defendant.

The defendant may be able to develop testimony that will extricate himself entirely from this contempt charge. The Court does not know anything about that and has no opinion about it.

But it does seem to the Court that in taking the testimony on both sides, an effort should be made to find out just the extent, if there is any contempt, of the contempt, and that involves the economic results of the stoppage of the coal production and that involves, of course, from your standpoint the question as to whether or not there was an honest conviction that this contract was terminated, and anything else that you can show.

Now, the Court thinks that in this matter which is so important and of so much interest to the people of this country and the people of the world, that the Court should not take a narrow view of the scope of the evidence.

474 Of course, it is perfectly apparent that the Court has no right to receive incompetent evidence, but the Court does not think this is incompetent, and the Court thinks that in view of the fact that the extent of the culpability, if any, is a very material question, it is proper for it to go into the record, and that is the reason the Court is letting it in.

Mr. HOPKINS. Very well, sir.

The COURT. And that is the reason the Court is letting in that sort of testimony on behalf of the defendant when the time comes for the defendant to introduce his evidence.

Mr. HOPKINS. For the purposes of the record only, we object on the additional ground that this is a hearing and a hearing alone upon the narrow issue of contempt and not upon the motion for preliminary injunction.

The COURT. Yes, sir.

Mr. SONNETT. Would the stenographer read the question?

The REPORTER (reading):

"Q. And based on your official experience and information which you received in the course of your official duties, can you state whether or not, in your opinion, there would be any effect on the Federal revenue resulting from a continued stoppage in bituminous coal production?"

The COURT. Proceed, sir.

475 The WITNESS. Any factor which will adversely affect income payments will affect Federal revenues.

The effect in Government receipts is not in all cases immediately, but the effect on tax liabilities is immediately. You are well aware that many taxes, as provided by statute, provide for a lag in the payment.

For example, corporation taxes are due the following March in quarterly payments, so there is considerable lag there.

Others come in more current. For example, stamp taxes are almost current, and others have a month or two lag, and so on.

But the effect on tax liabilities and ultimately tax collections is without question. In my mind the extent which revenues might be affected by various changes in income payments may be ascertained from some figures which I am about to give. This computation was made for another purpose, but will serve this purpose, it seems to me.

We made an estimate of the yield of the total Federal tax structure at about current levels of income payments and then we made another estimate assuming that income payments would be about $10,000,000,000 less than they are today. The difference in the tax yield applied to the total Federal tax structure between those two would amount to about $2,800,000,000.

476 Now, the arithmetic of that is that for each decline in the dollar of income payments, tax revenues will decline about 28 cents. That means, carrying the arithmetic table a little further, it would mean that a billion-dollar decline in income-tax payments would result in a decline of tax revenues about $280,000,000.

A five-billion-dollar decline in income payments would result in a decline of one and four-tenths billion dollars. And, as I said before, a ten-billion-dollar decline would result in a two-billion-eight-hundred-million-dollar decline in Federal revenue.

By Mr. SONNETT:

Q. Do you have that table with you, Doctor?

A. No, sir; I am sorry, I don't have it with me.

Q. Assuming that there would be a loss in national income payments of one million dollars—withdraw that—one billion dollars, as a minimum: assume that, if you will. What would be the loss to the Federal treasury?

A. On that assumption I think the carrying out of my table, I am not sure that I put that particular figure in, but that would be $280,000,000.

Mr. SONNETT. You may inquire, gentlemen.

Mr. HOPKINS. No cross-examination, Your Honor.

The COURT. Very well, sir.

Mr. SONNETT. No further examination.

The COURT. Step down, sir.

(The witness left the stand.)

477 Mr. SONNETT. Will you call Mr. Krug, please.

Thereupon—

JULIUS A. KRUG was called as a witness for and on behalf of the United States and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. SONNETT:

Q. Mr. Krug, you are the Secretary of the Interior, are you not?

A. Yes, sir.

Q. Referring to November 11, 1946, and subsequently, will you state whether you had negotiations with representatives of the United Mine Workers? If so, with whom and what those negotiations were.

A. I did have negotiations starting on November 11.

On November 11 I met at ten o'clock with the president of the United Mine Workers and his negotiating committee. I was attended by Captain Collisson, the Coal Mines Administrator, and members of his staff.

At that time the president of the United Mine Workers outlined the nature of his request for changes in the so-called Krug-Lewis contract. He also gave some background as to the bases for those requests and they were discussed for an hour or two.

478 During the course of that discussion I suggested again that the entire matter be taken up with the coal operators in the effort to reach an agreement which would promptly return the mines to private ownership under a contract based on collective bargaining.

The meeting recessed with the understanding that we would give the problem further study and the next conference was held on November 13 at 2:30 in the afternoon. At that time I outlined the happenings at a meeting which was held that morning with members of the Negotiating Committee of the coal mine operators. I suggested again that the operators were ready for a meeting where these matters could be worked out through free collective bargaining, and again suggested that in view of the rather substantial nature of the demands, we thought that was the sound way for making progress.

That meeting recessed after twenty or thirty minutes.

I had two subsequent meetings, both with Mr. Lewis privately. One late in the afternoon of November 13 and the other in the afternoon of November 14. At both of those meetings I tried to persuade from the president of the United Mine Workers—I tried to persuade him to sit down at once with the operators in an effort to work out an arrangement which would accomplish the desired purpose. The first of those

479 meetings, the president of the United Mine Workers said that he would take up the formal proposal I made with his negotiating committee, which he did, and he called me back later that night to say that the proposal had been rejected.

I met with him on the 14th and asked him again to reconsider and sit down with the operators, and outlined at that time, in writing, in a letter dated, I believe November 14, the proposal which I had in mind.

He again told me that the proposal would be taken under consideration by his negotiating committee and the last I heard from the president of the United Mine Workers is incorporated in his two letters of November 15; the first I received about 10:30, presuming to terminate the Krug-Lewis contract effective midnight on November 20; the other being a formal answer to our request that he negotiate with the operators, again rejecting it.

That is the substance of the four meetings that were held starting on November 11.

Q. Mr. Secretary, you referred to the demands advanced at the November 11 meeting as substantial demands. Will you state why they were substantial?

A. Well, unless it is relevant to the issues here I would prefer not to outline in detail the demands. We did measure them as best we could in terms of the increased cost of producing coal.

480 The best estimates our experts could make was that they would probably aggregate something like fifty cents a ton. I subsequently checked that figure with the operators' negotiating com-

mittee, and without making a detailed calculation they indicated that they would total to about fifty cents a ton.

The COURT. Is that to the ultimate consumer, sir?

The WITNESS. No, sir; that is the cost of production at the mine.

The COURT. Was there any calculation made as to the approximate additional cost to the ultimate consumer?

The WITNESS. No, sir. We made no calculation of that; but, if normal practice were followed, there would be something added to that in the cost to the ultimate consumer.

By Mr. SONNETT:

Q. Has it at all times been your position and the position of the Interior Department that the Krug-Lewis Agreement was in effect and could not be changed by unilateral action on the part of any one party to that agreement?

A. Yes, sir.

Mr. HOPKINS. Now, Your Honor——

The COURT. Just one minute.

What was that question, please, sir?

Mr. SONNETT. May the reporter read it back, Your Honor? I am not sure how I phrased it exactly.

The COURT. Yes.

The REPORTER (reading):

"Q. Has it at all times been your position and the position of the Interior Department that the Krug-Lewis Agreement was in effect and could not be changed by unilateral action on the part of any one party to the agreement?"

The COURT. The Court will have to sustain that objection.

Mr. SONNETT. May I amend the question, Your Honor, to add: Has it all times been your position and the position of the Department of the Interior, as expressed to the United Mine Workers of America, that the Krug-Lewis Agreement was at all times binding and could not be terminated by action of one party alone?

Mr. HOPKINS. Before the witness answers, Your Honor, we would like to interpose an objection.

This calls for a legal conclusion of the witness based upon the contract and its terms that are involved, if at all, in the main action, to wit, the complaint for declaratory judgment and are not relevant to the issue before Your Honor at this time. It invades the province of the Court, we add further.

The COURT. I sustain that objection as to the question as asked, but I will add this to the question: And was the fact that the Krug-Lewis Agreement was in full force and effect subject only to the limitations of Section 5 of the Smith-Connally Act until November 1, or until October 21—I will say that—1946?

The WITNESS. I wonder if I should have that entire question read?

The COURT. Yes, sir.

Repeat the question, Mr. Reporter.

I may not framed it exactly right myself.

The REPORTER. Shall I read it as originally given and then as you amended it, Your Honor?

The COURT. Yes.

The REPORTER (reading):

"Q. May I amend the question, Your Honor, to add: Has it at all times been your position and the position of the Department of the Interior, as expressed to the United Mine Workers of America, that the Krug-Lewis Agreement was at all times binding and could not be terminated by the action of one party alone?"

And then Your Honor said you would sustain his objection to the question as asked, and you would add this to the question:

483 "And was it the fact that the Krug-Lewis Agreement was in full force and effect subject only to the limitation of Section 5 of the Smith-Connally Act until November 1 or until October 21, 1946?"

The COURT. Was that fact questioned by the United Mine Workers until that time?

Mr. HOPKINS. Your Honor, with all due deference to the Court, but for the record, and before the witness answers, may we interpolate the same objection, most respectfully, that the question even as supplemented by Your Honor is not relevant to the narrow issue here on trial before Your Honor, and we respectfully renew our objections upon the reasons heretofore stated for the record.

The COURT. Objection overruled.

If we have made the question plain, and if not, I will ask it all over again, will you answer, Mr. Witness?

The WITNESS. I am sorry, Judge, I wish you would. I am not sure that I understand it.

484 The COURT. The question is whether or not the fact that the Krug-Lewis agreement was in full force and effect, subject only to limitations of Section 5 in the Smith-Connally Act, was ever questioned by the United Mine Workers.

The WITNESS. It had never been formally questioned, to the best of my knowledge, before October 21, 1946, at earlier meetings when dispute arose over the interpretation of the contract. I believe at one meeting on October 19 the President of the United Mine Workers asserted that any breach on our part would void the contract. I told him that I did not so construe it, but no reference was made to termination of the contract under Section 15 prior to the letter of October 21, 1946, to the best of my knowledge.

The COURT. Well, was the first intimation of any such suggestion prior to October 19?

The WITNESS. I believe so.

The COURT. When was it first?

The WITNESS. No; I am sorry. October 19 is the first day I recall that the assertion was made that breach on the Government's part would void the entire contract.

The COURT. Proceed.

Mr. SOMMERVELL. The Government has no further questions, Your Honor. You may inquire.

The COURT. Just one minute before you begin your cross-examination, please.

485 You say that the President of the United Mine Workers stated that breach on the Government's part would void the entire contract. Had the Government admitted a breach?

The WITNESS. No, sir.

The COURT. Then do you mean by your answer that what the President of the United Mine Workers said was that where there was an alleged breach on the part of the Government by the United Mine Workers that that terminated the contract? Is that what you mean?

The WITNESS. Yes, sir.

The COURT. Proceed.

CROSS-EXAMINATION

By Mr. HOPKINS:

Q. Mr. Krug, you advert in direct testimony to the date of November 11 as to the dates of negotiations with the United Mine Workers attended by you.

You are aware, I take it, sir, that negotiations were held between your representatives and the Mine Workers beginning November 1, 1946; are you not?

A. Yes, sir.

Q. Were you present at the meeting on November 1?

A. No, sir.

Q. On November 4?

A. No, sir.

486 Q. November 6?

A. No, sir.

Q. November 7?

A. No, sir.

Q. Where were you on October 21, the date that the original notice of the miners was addressed to you, sir?

A. Amarillo, Texas.

Q. When did you return to Washington?

A. Early on the morning of November 8, I believe. It was a Friday morning, whatever that date was.

Q. And then met the representatives of the Mine Workers for the first time three days later on November 11: Is that right?

A. When I returned on the morning of November 8 I indicated I was ready for meetings immediately. I was told one had been scheduled for the 11th, and I immediately wrote Mr. Lewis and told him I would attend that meeting, the scheduled meeting.

487 Q. I ask you, Mr. Krug, as to whether or not you, on October 27, sent the following wire to Mr. Lewis, dated October 27, 1946, addressed to Mr. Lewis in Washington:

"Replying to your letter of October 21, I am requesting that you and/or your representatives meet with Coal Mines Administrator Collisson and his associates on November 1 or any other date agreeable to you."

Did you send that wire, sir?

A. I did; yes, sir.

Q. From Phoenix, Arizona?

A. I believe so.

Q. Now, may I ask you, when you refer to "your letter"—they are the quoted words—"your letter of October 21"—you referred to the letter that you had previously received from the United Mine Workers, giving notice of the reopening of the contract?

A. Yes, sir.

Q. That is the letter of October 21?

A. Yes, sir.

Q. In replying to that letter, you sent this wire I have just interrogated you about?

A. There had been two previous responses to the letter of October 21: one by me, by wire from Amarillo, and another by letter from the Coal Mines Administrator, at my request, from Washington.

488 Q. Yes, sir; and I am now asking you about the wire from Phoenix, Arizona.

A. Yes, sir.

Q. I ask you, sir, Isn't it a fact that you received, either at Phoenix, Arizona, or at some point in the West, a wire from Mr. Lewis dated October 28, 1946, reading as follows:

"I esteem your telegram 27th received by me today, as compliance with request for official conference contained in my letter October 21. I accordingly advise that representatives United Mine Workers will meet with Coal Mines Administrator Collisson and his associates at 11 o'clock a. m. on Friday, November 1. Under these conditions Krug-Lewis Agreement remains effective and unchanged during the ensuing period of negotiations."

Did you receive that wire, sir?

A. I did; yes, sir.

Q. Subsequent to the receipt of that wire, your representatives, acting through Captain Collisson and others—that is, subsequent to the receipt of the wire of October 28 just referred to—your representatives did meet the Mine Workers in conference on November 1?

A. They did; yes, sir.

Q. Now, Mr. Krug, you have adverted to a letter written by you on November 14 addressed to Mr. Lewis, and you adverted to

489 the fact that you had received about 10:30 on the morning of November 15 a communication from Mr. Lewis, notifying you that the contract would terminate on Wednesday midnight, November 20. Is it not a fact that you also received on the same morning of November 15 another communication addressed to you, sir, signed, "Negotiating Committee, United Mine Workers of America, by John L. Lewis, President"?

A. Yes; later that same morning.

Q. Were you in your office at the time of the receipt of either of them?

A. I was not.

Q. Then, you are not prepared to say whether or not one was delivered at a different time to your office or whether they were simultaneously delivered?

A. All I can say is that immediately upon receipt, according to my information, the contents of both were phoned to me where I happened to be.

Q. The contents of both were phoned to you simultaneously?

A. No, no; one at a time; first the letter presuming to terminate the contract, and I think an hour or an hour and a half later a longer letter, answering my letter of November 14.

Q. The fact that they were communicated to you by telephone at different times is not to suggest on your part that they were not delivered simultaneously, is it?

490 A. I had a report from my office that they were not delivered simultaneously; that the shorter letter, presuming to terminate the contract, came first.

Q. Do you have in your possession the original of the letter of November 15, addressed to you, signed by the Negotiating Committee?

A. I do not; I have it in my files at the office.

Q. May I present you with a copy of such letter and ask you, Mr. Krug, to look at it and tell me whether or not it is a true copy of the letter that you received on that date?

A. Mr. HOPKINS. I would not want to vouch, on my memory, for all the words in this letter, but it looks to me like a copy of the letter I received on that date.

Mr. HOPKINS. I see. Then, the Government will offer it, Your Honor as—I mean the defendants will offer it, your Honor, as, I believe it is, Defendants' Exhibit 7.

(The letter of November 15 from the Negotiating Committee of the United Mine Workers to Mr. Krug was marked as "Defendants' Exhibit 7" and received in evidence.)

By Mr. HOPKINS:

Q. Mr. Krug, will you read that letter into the record, giving the full date, the person to whom addressed, and the signature?

Mr. SONNETT. If the Court please, I think, this being a long
491 letter, counsel can read the letter. I suggest, in the interest of orderly procedure, that he read it. He has a carbon copy of the letter, which the Secretary cannot say is exact.

The COURT. You may be right, except that in this particular case you yourself have asked witnesses to read letters.

Mr. SONNETT. I did not ask them to read carbon copies, if the Court please, which I alone authenticated. The Secretary has stated, as I understand his testimony, that he thinks this looks like the letter which he received, but he cannot state of his own knowledge that it is. There is no proof, of course, that it is in fact the letter which he received.

The COURT. If the Secretary has any doubt about it, he can state it. He says, as I understand it, that he has no real doubt about it but that he cannot vouch for every word.

By the COURT:

Q. Is that what you said, sir?

A. Yes, sir.

The COURT. The Court thinks he should read the letter.

The WITNESS. I will read it if I can, your Honor. It is not a very good copy; but I will do my best with it.

The COURT. Do you have the original?

Mr. HOPKINS. The original is in his possession

The WITNESS. I think I can read it if you will give me
492 an opportunity.

The COURT. All right.

The WITNESS. This is dated November 15, 1946.

It is addressed to Honorable J. A. Krug, Secretary of the Interior, Washington 25, D. C.

"DEAR MR. SECRETARY: Your communication of November 14, 1946, has been received and carefully considered. The United Mine Workers of America now make reply.

"On September 23, 1946, while in informal and private conference with you, we asked that the Coal Mines Administrator voluntarily

modify and adjust the miners' working hours. Your attention was again (as it had theretofore been) directed to the brutal 54-hour underground schedule of the men laboring in the bowels of the earth. This was prior to the United Mine Workers' national convention and prior to the recent national election. Since that date until receipt of your ukase of yesterday, you have remained silent and have deigned no reply to the 400,000 men who now serve the Government of the United States in the bituminous coal mines.

"The Mine Workers on October 21, 1946, exercising their contractual right, gave the requisite 10-day notice and respectfully requested a conference with you on November 1. You, while touring the West, contemptuously replied that you would be in Tule
493 Lake, California, and might find time to discuss the matter at that time and place, if the miners would journey westward to meet you there. Changing your mind, you finally designated your representatives to attend to the conference, while you continued your tour until after Tuesday, November 5. You finally appeared on Monday, November 11. Since that date, you have graciously given of your time, in full and private conference, to the extent of three hours and fifty-eight minutes.

"You were aware by the formal notice of October 21 of the operation of the ten-, fifteen-, and five-day provisions of the contract. On yesterday, November 14, 25 days after formal notice, you made your proposal.

"Your statements to the contrary notwithstanding, the Mine Workers constantly from November 1 to and including November 11 made concrete proposals to you on the matters set out in the notice of October 21. You, cavalierly, now propose a 60-day freeze of the existing conditions on terms which you have first negotiated with the operators, who are strangers to the Krug-Lewis agreement. You arbitrarily assert the right to designate that 60-day period to begin on November 16 and prescribe the method of conducting a conference between the Mine Workers and Operators during that period. You, likewise, assert that the Krug-Lewis Agreement can be 'modified by mutual consent.' Then, sir, where do you find the legal or moral right to deny to the mine workers their plain contractual
494 right to reopen the contract, as we respectfully requested on October 21?

"Your proposal for this operator-miners' conference to supersede the conference now in existence since November 1 is sheer folly, an empty platitude, well known to you so to be. On September 13 undr the auspices of Admiral Moreell, in joint conference with us, the operators in writing revealed their divided household and, as epitomized by former Senator Burke, hau'tily, arbitrarily, and with blunt notice rejected the fundamental issues as presented to them by Admiral Moreell. You now, at the last hour, of the last day, yield to the blandishments and soothing siren voice of the operators and seek to place the United Mine Workers of America and its members between Scylla and Charybdis. This course we refuse to follow.

"The Government of the United States seized the mines and entered into a contract. The mine workers do not propose to deal with parties who have no status under that contract. We do not propose to be driven like dumb beasts to the slaughter of slow strangulation en-

visioned by your proposal and the Operators' well known and long used tactics of evasion and delay. We call upon you to honor your contract.

"This, therefore, Mr. Secretary, constitutes our reply in the negative to your proposal.

"Yours truly, Negotiating Committee, United Mine Workers
495 of America; by John L. Lewis, President."

496 Mr. HOPKINS. Thank you, sir.

By Mr. HOPKINS:

Q. Mr. Krug, it is a fact, is it not, sir, that when you did first meet the representatives of the Mine Workers on November 11 that present as representatives of the Mine Workers, in addition to Mr. Lewis, was the Mine Workers Negotiating Committee composed of the several district presidents. They attended at that conference in your offices, did they not, sir?

A. Yes, sir.

Q. Is it not true, sir, that upon that occasion Mr. Lewis, as the spokesman for the United Mine Workers, outlined to you, sir, the various questions involving hours, wages, working conditions, the matter of the computation of the funds due to the Health and Welfare Fund, and other matters looking to a new contract: That is correct, sir, is it not?

A. That is generally correct, yes.

Q. Mr. Secretary, you adverted in your direct to a meeting with Mr. Lewis on October 19, which was two days prior to the notice of October 21. Is it not true, sir, that in that meeting between you and Mr. Lewis there was at that time outstanding and unresolved a dispute between the Mine Workers and the Coal Mines Administration in reference to payment of pro rata vacation?

A. With respect to interpreting the existing contract,
497 yes.

Q. There was outstanding that dispute at that time, and that was discussed between you and Mr. Lewis on that occasion?

A. Yes, sir.

Q. October 19?

A. Yes, sir.

Q. You were aware at that time, were you not, Mr. Krug, that an arbitrator's award had been made on the pro rata vacation payment dispute in Illinois sometime in the latter part of August 1946?

A. Yes, sir.

Q. And on October 19 isn't it a fact that you refused, in discussing the dispute with Mr. Lewis, to recognize that arbitrator's award?

A. That is not a fact.

Q. State the fact, then.

A. I am sorry, let me complete my answer, will you, please?

Q. If you will.

A. I told Mr. Lewis that I would be willing to agree to that construction of the contract provided I knew specifically the cases that it covered; that we could agree together its application to problems before us. Mr. Lewis refused to do that.

498 Q. Very well, sir. Then on October 21 did you authorize Captain Collisson, as Coal Mines Administrator, to accept that award as made by the Illinois arbitrator?

A. I authorized him later that same day, on October 19, to dispose of the question of grievance that seemed to be disturbing the coal miners by accepting the ruling of the arbitrator.

Q. Did you put any reservation upon the applicability of that arbitrator's award as to other cases?

A. I did not.

Q. How long was that after you had had your talk with Mr. Lewis that you gave such instructions to Captain Collisson?

A. We discussed it for two or three hours that afternoon, and at that time I gave the instructions to Captain Collisson.

Mr. HOPKINS. If the Court will indulge me just one moment.

The COURT. Certainly.

Mr. HOPKINS. That is all, Your Honor.

Mr. SONNETT. No further questions. Thank you, Mr. Secretary.

(Witness excused.)

499 Mr. SONNETT. If the Court please, the Government rests at this time with the exception of certain outstanding offers of proof which Your Honor has indicated he would rule on tomorrow. We have no further oral testimony.

The COURT. Gentlemen, there appears to be nothing further prior to the beginning of the defendants' testimony, except the matters which Mr. Sonnett has just mentioned and the proceedings of November 25, which the Court mentioned. Neither one of these matters can be taken up until tomorrow morning because of the understanding, so I see nothing to do but to adjourn at this time until tomorrow morning at 10 o'clock.

Is there any other suggestion?

Mr. HOPKINS. That is acceptable to the defendants, Your Honor.

(Thereupon, at 3:55 o'clock p. m., an adjournment was taken until the following day, Tuesday, December 3, 1946, at 10 o'clock a. m.)

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500 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *Tuesday, December 3, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 10:00 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Associate Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the Attorney General;

501 J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WILLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

502 PROCEEDINGS

The COURT. Gentlemen, I presume that the first thing we will take up is the question as to whether or not the briefs which were referred to by plaintiff yesterday should be admitted in evidence, and I expect I will hear the defendants first on that.

Mr. HOPKINS. If your Honor please, in reference to the point about which the Court inquires——

The COURT. How is that?

Mr. HOPKINS. I say, in reference to the matter about which the Court now inquires, to wit, the briefs that were tentatively offered by the Government on yesterday, the Government, in response to your

Honor's request, furnished us on or about 6 o'clock on yesterday evening copies of such briefs, together with a letter indicating the portions sought to be introduced into this case.

The defendants, and each of them, your Honor, object to each of the offers of proof and the excerpts from the several briefs as indicated by the Government, without detailing them, upon the ground that such are not germane, are not pertinent, are not relevant to the issue in this case now before your Honor; that they are incompetent and immaterial, having to do with a previous case long prior to the trial of the issue—the narrow issue—now before your Honor.

503 The Court. When was that case tried—the Laughlin case.

Mr. Hopkins. The dates involved were, I think, in September of this year.

It might be added for the record, as an additional objection, that they are purely argumentative and not pertinent to the issue here on trial.

Mr. Sonnett. If the Court please, I think there is no valid objection as to competency of the evidence, if it be relevant or material, since the evidence, or offered evidence, consists of certified documents from the official files of this court and of the Circuit Court of Appeals, duly and properly certified by the respective clerks.

With respect to the question of materiality or relevance, it was our thought that the fact that counsel have subscribed to a view of the law contrary to the view they urged in this case, it would be material and relevant.

However, our offer of these papers as exhibits in this case was intended as a mechanical convenience, for the putting before the Court of facts which we think the Court has every right to take judicial notice of in any event.

That is our position with respect to the offer.

The Court. You mean the fact of the inconsistent position?

Mr. Sonnett. Yes, your Honor.

The Court. Of course, under the new rules, lawyers are
504 allowed in their pleadings to take inconsistent positions.

I remember down in the country a case before a justice of the peace where a man was sued because allegedly he had borrowed a still during Prohibition and had broken the still before he returned it. He said he had three defenses.

The first was that he had never borrowed the still. The second was that the still was broken when he borrowed it. The third was that he had returned the still in good condition.

Now, of course, those inconsistent defenses did not assist his case. The question the Court has to consider is whether or not, while an inconsistent defense may be made, the fact of its inconsistency does not throw some light—throw some light—upon the sincerity of the present position of the litigants. Now, is that your theory?

Mr. Sonnett. That is it exactly, sir.

The Court. The Court thinks that from that standpoint—from that viewpoint—the testimony should be admitted, and so rules.

Now, does the Government desire——

Mr. Padway. Before you leave that part, if the Court please, there has been some talk here of inconsistency. We do not concede any inconsistency.

The COURT. No; I understand.

Mr. PADWAY. And we do not concede that the Government in introducing this brief binds us by any contentions it makes in its brief. That is exactly what the Government is doing here. They are not only introducing our briefs, or anything we may have said in the briefs, touching on a discussion of the law, but they are also offering their own brief as a discussion.

Now, we are not admitting any inconsistency; in fact, we disavow it. On the contrary, it is argumentative. The use of briefs of this kind may be made in argument to show to the Court what position we have taken. At any other time it is factual matter.

It is the privilege of counsel to interpret the law in any one case in one way, and simply enough to interpret it another way in another case, depending on what aid it has had from other cases in the meantime.

I cannot see that this can have any other effect than argument. To offer it as testimony in the case and make it part of the record, and for this Court to consider it beyond the realms of mere argument in positions taken, and only for the purpose of argument, is, in my opinion, error. It is not only immaterial, but it is highly incompetent.

The COURT. Well, as I understood the statement made by counsel for the Government, while the briefs were not the briefs of the defendants and were briefs filed by the Government, defendants specifically adopted the briefs as their view of the law.

Mr. SONNETT. Government's Exhibit 38, if the Court please, signed by counsel in this case, expressly so states.

The COURT. Signed by counsel in this case?

Mr. SONNETT. Yes, Your Honor.

The COURT. As late as September 23?

Mr. SONNETT. It was filed on September 24, 1946, according to the certificate of the clerk.

The COURT. The Court thinks them competent, Mr. Padway.

Mr. PADWAY. I don't want to get into too enlarged a colloquy with the Court, but let's even test the soundness of that.

Are the same counsel in this case as were in the other case? Some are and some are not. Suppose different counsel is called, and they have a different view, as frequently happens—perhaps that is the purpose of calling in different counsel—it is not the same case. If it is a parallel case, and to illustrate that, a position was taken in another case different than this one, I say again that is nothing more than argument, entitled only to such weight as the Court intends to give it by way of argument. This is not the same case at all. This is a different case entirely.

The COURT. But you cannot argue it unless it is in the record.

Mr. PADWAY. Sir?

The COURT. You cannot argue it unless it is in the record.

Mr. PADWAY. Oh, I beg to differ with you. The Court may take judicial notice of these briefs. We are not disputing that there was such a case; we are not disputing that they were filed; we are not disputing that they were signed by the then counsel for United Mine Workers in the case; all that is not disputed.

The Court takes judicial notice of cases and proceedings. We often refer to briefs in cases to show what position was taken in a case, in

order to analyze a decision on particular facts. My conception of the law in this case may be entirely different than the concept counsel in the previous case had. I don't know, but that merely leads to argument and is entitled to such weight as the Court would give it, but to make it evidence and part of the record so that it may have some binding effect upon us, to the benefit of the Government and to the detriment of ourselves, seems to me to go beyond what is competent and admissible evidence.

508 The COURT. The Court does not think that essentially it makes any difference if the Court could take judicial notice; it doesn't seem to the Court it makes the slightest difference whether it is admissible or not in argument or admissible in evidence as part of the evidence, because in the last analysis it becomes only a matter of argument anyhow as to what effect it should have.

Mr. PADWAY. This is what I am contending. I am contending the Court can only consider it for that purpose.

The COURT. Of course that is the only way the Court will consider it even if it is in the record. It is the only way I could consider it.

I want to ask counsel for the Government whether you desire to again offer the remarks made by Mr. Lewis in May 1946, before the microphone?

Mr. SONNETT. The Government renews its offer.

The COURT. All right, sir; as the Court understands the defendants' position, it is this: That after the Krug-Lewis agreement was entered into the defendants had a right to say, after thirty days, that no agreement existed between it and the Government. The Court thinks that the statement made by Mr. Lewis before the microphone in May 1946, is some evidence that he couldn't have had any thirty-day period in mind at the time he made the statement, and therefore it should be admitted in evidence.

509 Mr. PADWAY. May it please the Court, I don't understand that to be the position of the defendant, and it is not a question of what is the position of the defendant. The question that Your Honor must pass upon is what did Mr. Lewis intend when he made that statement. Would the Clerk be kind enough to take that statement—will Your Honor let me have it for a moment——

Mr. SONNETT. I have a clean copy of it, Your Honor. Here is a copy for the Court, Mr. Clerk.

Mr. PADWAY. Because this is so important I would like to read it and then make a brief analysis of it.

Mr. SONNETT. If the Court please, before counsel proceeds with what he proposes to do, may I say that the rule which he has sought so often to invoke, that the words speak for themselves, is here applicable.

Mr. PADWAY. But we are now standing on an objection, and I am now assigning to the Court my reasons for objection as to the admissibility of this statement in this court.

The COURT. Will you let me look at this to see if it is the same one I looked at yesterday?

Mr. PADWAY. All right.

The COURT. I would like to look at the original, if you have it there.

The CLERK. Do you have the original?

510 Mr. SONNETT. If the Court please, we do not have the rough copy.

The COURT. This is an exact copy?

Mr. SONNETT. This is an exact copy, if the Court please.

Mr. PADWAY. Now, there is no dispute, if the Court please, on the question of Mr. Lewis having made the statement. We admit the statement was made. Our objection goes to this: The Government, I take it, intends that this statement is a binding admission on the part of Mr. Lewis respecting a construction or a feeling or an understanding he had in his own mind as to what its import is.

The COURT. That is not the Court's conception of it.

Mr. PADWAY. The Court so stated.

The COURT. The Court thinks it is some evidence.

Mr. PADWAY. Some evidence?

The COURT. Just one minute—that it is some evidence that he didn't have in his mind at the time he made that statement that the defendants have a right to declare the contract at an end at the expiration of thirty days.

Mr. PADWAY. Oh, now, may it please the Court——

The COURT. Is that your view about it?

Mr. SONNETT. Yes, Your Honor; that it is some evidence as
511 to the wilfulness of the defendants at the time of the contempt.

The COURT. I think that amounts to the same thing, sir.

Mr. SONNETT. I think it does.

Mr. PADWAY. What I wish to impress by this argument is this, Your Honor: That this statement is true and correct, even though made by Mr. Lewis as a layman. At the time he did make it, what did he say? He said that:

"A contract has just been covered by execution in the White House. It is a national bituminous agreement by and between the Government as represented by Secretary of the Interior Krug and the United Mine Workers of America. It settles for the period of Government operation all the questions at issue."

The rest, of course, becomes immaterial.

Now, Mr. Lewis did not infer nor did he say nor is there anything in this statement that can be construed as a deletion or a renunciation of the April 1945 agreement. And in April 1945 it was agreed by Section 15 on a process of termination, a process of negotiation. Mr. Lewis had in mind at that time, at least there is no evidence to the contrary by this statement, that that provision was carried into this agreement, and that is consistent with his statement. In other words, that as long as this agreement would continue to run, as long as
512 the Government had the operation of the mines, at least being only a paper operation but such operation as it claimed, all rights by this agreement which were embodied in the agreement of April 21—was that the date?

Mr. HOPKINS. April 11.

Mr. PADWAY. April 11, were carried forward and became part of this agreement and remained in force and effect during Government operation.

513 Now, my purpose in emphasizing that at this time is because counsel is seeking to leave the impression that by this statement Mr. Lewis was bound to continue with that agreement, the so-called Krug-Lewis Agreement, and only that agreement, and we must stand within the four corners of that instrument, without carrying over the instrument of 1945.

We emphatically and definitely state, and that is our contention and has been and there has been no position inconsistent with that throughout this trial taken by us that the 1945 agreement of April 11, its terms and conditions, and particularly Section 15, which prescribed a method of procedure of opening up negotiations and of terminating the agreement, were part and parcel of the agreement and were carried forward and embraced within the agreement of May 1946.

Now, counsel is privileged to argue to the contrary, but not for a moment do we concede that Mr. Lewis intended nor is there anything in here that deletes that.

Now, the basic point that I wish to make on that argument is this: that can only be determined at the time of the issues in the original case brought here. That is why the original case was brought. That may have constituted a dispute between Mr. Krug and Mr. Lewis.

514 Mr. Lewis had one interpretation, made in good faith, which he had a right to assume, and which he probably determined also upon the advice of counsel, and the Government takes another position.

But this does not enlighten us on that phase of it. This merely says that the agreement that was just entered into will run as long as the Government has the mines under its control.

We don't deny that. The agreement itself will run. It will run that, and everything that is in that agreement, and by reference and by understanding and at least by what Mr. Lewis intended when he made that agreement, and has always contended since that time, that the April 1945 agreement, and its process and procedure, is carried forward into this agreement.

The COURT. But, Mr. Padway, you lose sight of the fact that the defendant will have every opportunity to present its position as soon as this testimony is disposed of.

The Court only says that in its opinion, after the very best consideration it is able to give this, that it does throw some light on the question as to whether Mr. Lewis believed in May of 1946 that he had a right to declare his agreement with the Government at an end at the expiration of 30 days. That is all.

515 Mr. PADWAY. Well, I don't want to put a question to Your Honor, I would rather state my contention—it is our contention that that issue will be resolved at the time that the original suit will be brought on for trial.

If it is the intention of the Government to have the Court pass upon that phase at this particular time, it is wholly irrelevant from the issues of the contempt, then what we are really doing here, we are trying out the original case, which we have not prepared to do. We have not filed an answer and we have not joined issue at this time, and we have tried hard on the basis of all the objections Mr. Hopkins made to stay away from an issue that is foreign to the contempt.

But I cannot permit the record to stand without emphasizing as emphatically as I can that it is our position, and we have never receded from that position, that the 1945 agreement of April 11 is part and parcel, at least with respect to Section 15, and the termination of it, and the process of negotiation is carried into the agreement of 1946 known as the Krug-Lewis Agreement.

The COURT. The Court understands that that is your position and that is the contention you will make, and you may make it successfully when that case is tried.

Did I understand you to say you had not filed an answer yet?

516 Mr. PADWAY. Not on the main—no; our time has not expired yet, if the Court please.

The COURT. Oh, I see.

Mr. PADWAY. Yes.

The COURT. Now, gentlemen, counsel for the defendants said yesterday that it might or might not make certain admissions as to the testimony which the Court desired to offer of certain of the proceedings of November 25.

I don't know what your position is this morning, gentlemen.

Mr. SONNETT. If the Court please, I am most reluctant to interrupt, but may I, in order to supplement and clarify the exhibits marked for identification yesterday, that is, Exhibits 36, 37, and 38—that is the briefs, and so on—may I also offer as a supplementary exhibit just for the sake of the record, as Exhibit 38-A, a carbon copy of my letter of yesterday to counsel indicating the portions of the brief to which the Government refers or proposes to refer, which copy is completely marked as was the copy sent to counsel.

The exhibit offered before the Court had not been completely marked.

The COURT. Yes, sir.

Mr. SONNETT. It is for clarification, and is an exact copy of the one sent to you, Mr. Hopkins.

Mr. HOPKINS. To which the same objections are raised.

517 The COURT. The objection is overruled, gentlemen.

(Thereupon, the document referred to was marked "Government's Exhibit 38-A" for identification.)

Mr. HOPKINS. If Your Honor please, as we understood the Court on yesterday, in reference to the question of whether or not the court reporter had accurately transcribed statements made into the record on that day by Government—by defense counsel, and the remarks of the Court that may have followed thereon or prior thereto, the defendants and each of them now stipulate for the record, sir, that the statements made by the defendants, or statements made by counsel in behalf of the defendants, and the statements made by the Court in response thereto or subsequent or prior thereto, as transcribed in the record by the court reporter are accurate.

The COURT. Well, what has counsel to say as to whether or not the individual defendant John L. Lewis had any comment whatever to make upon any of the statements?

Mr. HOPKINS. The response of the defendants' counsel in answer to Your Honor's question is this, that the defendant John L. Lewis was in the courtroom on the day of November 25, at the time referred to when the statement was made by counsel in his behalf and by the Court; further, the defendant John L. Lewis did not make any statement personally except as he spoke through his counsel,

518 the present person addressing this Court.

The COURT. But in view of the statement of counsel for the defendant, the Court does not see any purpose in having the reporter take the stand and testify.

Mr. SONNETT. I would think not, if the Court please. May I suggest, however, just one minor typographical error at page 5 of the record, in the second sentence, or, rather, the first sentence of my statement reading as follows:

The COURT. What page, Mr. Sonnett?

Mr. SONNETT. Page 5, Your Honor.

The COURT. "May I inquire"?

Mr. SONNETT. "May I inquire, if the Court please, I do not know whom counsel is appearing before."

The word "before" obviously should be the word "for".

Mr. HOPKINS. No objection.

The COURT. All right, if there is no objection.

Mr. SONNETT. If the Court please——

The COURT. It seems to me that the matter is now in the record for all purposes, gentlemen.

Mr. SONNETT. I think so, Your Honor. I did, with the Court's permission, respectfully wish to call to the Court's attention that the transcript of the statement made by John L. Lewis on May 29, 1946, which the Court has ruled will be admitted into evidence, has not formally been received nor read into the record.

519 May we, in accordance with the Court's ruling, have that done now, sir?

The COURT. Yes, sir.

Mr. SONNETT. I have, if the Court please, a carbon copy which counsel has seen.

Counsel has stated, if the Court please, that he has no objection to this as to the accuracy of the transcript.

The COURT. All right.

(Whereupon, the original of the statement in question was handed to Mr. Sonnett by the Clerk.)

The COURT. Now, gentlemen, will the defendants proceed if you are ready now?

Mr. HOPKINS. Did I understand counsel for the Government to say for the record, Your Honor, that the Government rests its case?

Mr. SONNETT. The Government now rests its case.

The COURT. All right, sir.

Mr. HOPKINS. So do the defendants, individually, officially, and in their individual capacity, and the union as such.

If the Court will indulge me a moment, there is a motion that the defendants would like to make to Your Honor at this time.

The COURT. Proceed.

Mr. HOPKINS. The defendants and each of them move,
520 Your Honor, to strike all the testimony adduced by Government upon the trial of the contempt now before Your Honor and to state as the reasons, and in support of that motion, the reasons that were assigned by defendants' counsel for the record to this Court on November 29, the date that the first Government witness was offered, to wit, Captain Harvey Collisson. Without burdening the Court, I merely state that those reasons as presented to the Court ran as the Court allowed to each and all successive witnesses and the reasons are enumerated on pages 247, 248 of the record of the proceedings of November 29.

The COURT. 247 and 248, sir?

Mr. HOPKINS. Yes. And 249, I believe, is the conclusion of it and Your Honor's statement "There is no reason why that should not be done."

The COURT. Gentlemen. On the defendants' motion to declare—I forget the language—to declare null and void the rule to show cause—is that what it is?

Mr. HOPKINS. To discharge and vacate, Your Honor.

The COURT. Oh, yes. To vacate the rule to show cause, the Court ruled that that motion should be dismissed.

Now, as far as the legal effect is concerned, the Court thinks that this is the renewal of that motion and, therefore, the motion will have to be overruled.

Mr. HOPKINS. Very well.

521 Now, gentlemen, do you desire to argue the matter, prior to the Court's ruling, on the question of the guilt or innocence of the defendants as to the violation of the Court's restraining order? Do you desire to be heard?

Mr. SONNETT. If the Court please, the Government has prepared requested findings of fact and conclusions of law, which we would respectfully submit to the Court and to counsel as setting forth the Government's views as to the relevant facts and conclusions of law which might be found by the Court.

So far as argument is concerned, if the Court please, the Government desires to offer no additional argument unless the defendants desire to offer additional argument.

Mr. PADWAY. May it please the Court, I think that it would be appropriate to ask for a short adjournment, in order that we may receive a copy of these proposed findings and of having an opportunity to read them over with counsel.

The COURT. I think so, too.

Mr. PADWAY. Of such time as you will allow.

The COURT. Just make a suggestion, and if you are not through at that time, the Court will enlarge the time.

Mr. PADWAY. Will the Court give us 30 minutes?

The COURT. Certainly.

Mr. SONNETT. The Government agrees wholly with that.

The COURT. Very well.

522 (At 10:30 a. m. a recess was taken until 11 a. m. of the same day.)

523 The COURT. I understand that there are two pages, 16 and 17, which have been substituted, and I will look over those pages before I begin.

What changes were made in page 16, gentlemen?

Mr. SONNETT. The changes, if the Court please, on page 16, are in our view changes of form and not of substance, particularly with respect only to paragraph 38.

The COURT. On page 17, as I understand it, the changes that are made are made in the seventh and eighth paragraphs?

Mr. SONNETT. Yes, Your Honor. They are purely, in our opinion, formal changes.

The COURT. I understand. I will hear you gentlemen.

Mr. HOPKINS. If the Court please, are the defendants to understand now that the Government has made formal offer, submission to the Court of its proposed findings of fact and conclusions of law?

Mr. SONNETT. Yes, Your Honor.

Mr. HOPKINS. In that case then, if it please the Court, defendants have a statement and a motion to make, as follows:

We have read the findings of fact and the conclusions of law as proposed by the Government, and object to each and all of them
524 as being contrary to the evidence and to the law applicable to the issues in this case.

We now move the Court to render judgment in favor of the defendants, and each of them, and to find the defendants and each of them not guilty.

The COURT. Gentlemen, I have read the proposed findings, of course. On page 13 of Section 32, complete hearing extending over a period of how many days?

Mr. SONNETT. If the Court please, the transcript indicates that hearings have been had on November 25, 1946; November 27, 1946; November 29, 1946; December 2, 1946; and December 3, 1946.

The COURT. Five days—four days and a part of a day; is that right?

Mr. SONNETT. Yes, Your Honor.

The COURT. I will just put four days.

Mr. SONNETT. Yes, Your Honor, we respectfully submit four days.

The COURT. Gentlemen, I have gone over these carefully, and as far as I can see the findings of fact are in accordance with the evidence, and from the evidence the conclusions of law are inevitable.

Mr. PADWAY. May it please the Court, am I to understand that at this time the statement Your Honor has made is that that is an adoption of those findings of fact and conclusions of law?

525 The COURT. Yes, sir.

Mr. PADWAY. If they are, I also conclude, then, Your Honor has concluded to find the defendants guilty of contempt.

The COURT. That is true.

Mr. PADWAY. Well, I presume the next procedure is for Your Honor to determine the punishment.

The COURT. That is the next procedure; yes.

Mr. PADWAY. In view of that, in behalf of the defendant, John L. Lewis, and the other defendants, by representation through Mr. John L. Lewis, I request the opportunity that he make a statement to this Court.

The COURT. That he make a statement?

Mr. PADWAY. Yes.

The COURT. The Court will permit him to make a statement.

526 Mr. LEWIS. The history of the labor injunction prior to 1932 is a sordid one. Congress in 1914 recognized that by passing the Clayton Act, and again in 1932 by enacting the Norris-LaGuardia Act. The latter Act, in plain language which any intelligent citizen can understand, provides that——

"No court of the United States * * * shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute * * *."

The United Mine Workers are in a dispute over working conditions in the mines which, in our opinion, spells nothing else but a labor dispute. The Clayton Act and the Norris-LaGuardia Act clearly enumerate certain traditional union activities which shall not be re-

strained or enjoined by any court, among them being ceasing or refusing to perform any work or to remain in any relation of employment, and the giving of publicity to the facts involved in any labor dispute.

On October 21st this Union asked for conferences to discuss our grievances. Outstanding among these grievances which cry aloud for immediate adjustment is the deadly, brutal fifty-four-hour work week underground in American coal mines. Our miners work at the operators' option, nine hours per day, six days per week, which
527 is a longer work day and work week than prevails in the mining industry of any civilized country in the world. These disputes over working conditions in the mines were not resolved and the representatives of the United Mine Workers determined that the so-called Krug-Lewis Agreement was breached. The representatives, after a period of twenty-five days, on November 15th, notified the Secretary of the Interior that the contract was terminated as of November 20th.

The agents of the Government, in what we believe to constitute a violation of both the Clayton and the Norris-LaGuardia Acts, applied for a temporary restraining order which this Court granted without notice and without a hearing.

This Court has now ruled that the Clayton and Norris-LaGuardia Acts do not apply to this controversy. That is a matter for legal counsel to appraise and evaluate.

But above and beyond those statutes there is a Federal Constitution binding on all, even upon the Government, and that Constitution guarantees to the miners, as it does to all citizens, freedom of speech, freedom of press, freedom of assemblage, and freedom from involuntary servitude.

Your injunction, sir, I respectfully submit, deprives the miners of these constitutional rights. As citizens, the miners and I stand upon the rights guaranteed in the Constitution. This is labor's traditional position. For the purpose of acquainting the Court with the
528 historical position taken by the American Federation of Labor, permit me to read a paragraph from a report unanimously adopted by the American Federation of Labor at its 1919 convention:

"The fate of the sovereignty of American people again hangs in the balance. It is inconceivable that such an autocratic, despotic and tyrannical power can long remain in a democracy. One or the other must ultimately give way, and your committee believes that this convention should declare that, as wage earners, citizens of a free and democratic republic, we shall stand firmly and treat all injunctive decrees that invade our personal liberties as unwarranted in fact, unjustified in law and illegal as being in violation of our constitutional safeguards; and accept whatever consequences may follow."

This is still the declared and effective policy of the American Federation of Labor.

We are now confronted with the restraining order issued by this Court November 18th, 1946, which this Court holds that the United Mine Workers and I have violated. Most respectfully I must state to the Court that the considerations that prompted our original course of action with respect to this coercive and all-embracing restraining order, issued without any opportunity given the defendants to present their side of the case, have not changed. On the contrary,

529 recent events have greatly and acutely enhanced our initial conviction.

Speaking and acting in my official capacity as President of the United Mine Workers, an organization composed of some six hundred thousand coal miners, and as Vice President of the American Federation of Labor with a membership of almost eight millions of American wage earners, and profoundly mindful of their highest traditions and basic rights, I cannot, by action or by inaction acquiesce in what must be described as the ugly recrudescence of "government by injunction." I cannot disavow labor's principles or policies, nor am I disposed to adopt a course which will inevitably amount to a *d*etrayal of their constitutional rights.

The mine workers are God-fearing, law-abiding American citizens. They have not ceased work in defiance of their Government. On the contrary, they have asserted their rights as free men to protect the unjust and arbitrary acts to which they have been subjected by individuals employed by the Government.

Without intending any personal disrespect to this Court, I must respectfully but firmly stand upon those vital rights and freedoms that are rooted in our Constitution and that have been given full expression by the Congressional mandates of 1914 and 1932.

530 The COURT. Gentlemen, the verdict of the Court in the case of United States of America against the United Mine Workers of America, an unincorporated association, for violation of the restraining orders issued by this Court in that case is found guilty.

The defendant, John L. Lewis, in the said case, United States of America against the United Mine Workers of America, an unincorporated institution, and John L. Lewis individually and as president of the United Mine Workers of America, is found guilty, that is, John L. Lewis individually.

Gentlemen, the matter of sentence on these two convictions for contempt—and I should have said in the case of John L. Lewis for his contempt in violating the restraining orders issued in this case—the matter of the sentences is, of course, very important, and while it may be somewhat unusual it is certainly not improper for the Court to say he would like to have the views of counsel for the defendants and counsel for the Government as to what these sentences should be.

It may be that you are not in a position at the moment to give your views, and the Court will suggest that the Court adjourn until tomorrow morning at 10 o'clock to give the Court additional time to give the matter consideration, and to give counsel for both
531 sides additional time, or time at least, in order to be able to express their views as to what the penalties should be. If there is no objection that is what the Court will do.

Now, pending sentence, does the Government or not suggest that the individual defendant, John L. Lewis, be placed under bond and if so, how much?

Mr. SONNETT. Under all the circumstances, if the Court please, it is my recommendation, respectfully, that the defendant be permitted to remain in the custody of his counsel upon their undertaking to produce him tomorrow morning.

The COURT. That is satisfactory to the Court.

Mr. HOPKINS. That is satisfactory to counsel.

The COURT. All right.

Mr. HOPKINS. Just one second, if Your Honor will indulge us.

Mr. PADWAY. If the Court please, no sentence has as yet been imposed. If the Court would require a bond there would be nothing else to do about it, but I can assure this Court—all counsel can—that the Government did not need to add that he remain in custody of counsel. Mr. Lewis will come before this bar and before this Court anytime you direct him to be here, and if you direct him to be here tomorrow morning this Court may rest assured Mr. Lewis will be here.

The COURT. The Court has no comment to make. The Court
532 thinks that the Government's statement was proper, and the Court stands adjourned until tomorrow morning at 10 o'clock.

(Thereupon, at 11:34 o'clock p. m., the hearing was adjourned until the following day, Wednesday, December 4, 1946, at 10 o'clock a. m.)

533 In the District Court of the United States for the District of Columbia

Holding a Motions Court

Civil Action No. 37764

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, DEFENDANTS

WASHINGTON, D. C., *December 4, 1946.*

The above-entitled cause came on for further hearing on a rule to show cause why the defendants should not be adjudged in contempt of court, before Hon. T. ALAN GOLDSBOROUGH, Associate Justice, at 11:55 o'clock a. m.

Appearances:

On behalf of the Government: JOHN F. SONNETT, Assistant Attorney General; JOHN FORD BAECHER, Special Assistant to the Attorney General; JOSEPH M. FRIEDMAN, Special Assistant to the
534 Attorney General; J. FRANCIS HAYDEN, Special Assistant to the Attorney General; ROBERT L. WERNER, Special Assistant to the Attorney General; GEORGE MORRIS FAY, United States Attorney, District of Columbia.

On behalf of the Defendants: WELLY K. HOPKINS, 900 15th Street NW.; EDMUND BURKE, Springfield, Illinois; T. C. TOWNSEND, Charleston, West Virginia; HARRISON COMBS, 900 15th Street NW.; JOSEPH A. PADWAY, 738 Bowen Building; HENRY KAISER, 736 Bowen Building; JAMES A. GLENN, 736 Bowen Building.

PROCEEDINGS

The COURT. The Court will now take a recess until three o'clock.

(At 11:57 a. m., a recess was taken until three o'clock p. m., of the same day.)

AFTER RECESS

535 (The proceedings were resumed at 3:00 o'clock p. m., at the expiration of the recess.)

The COURT. Gentlemen, on yesterday at the time when the Court announced defendants guilty, the Court requested that counsel for the respective parties give the Court its views as to the sentences which should be imposed.

I would like to hear from the defendants.

Mr. HOPKINS. We would have no views to express, Your Honor, except in the light of such views as might be expressed by Government.

The COURT. What is that?

Mr. HOPKINS. We would have no views to express, I respectfully suggest to Your Honor, except in light of views that might be expressed by Government.

The COURT. Proceed, Mr. Sonnett.

Mr. SONNETT. If the Court please, the evidence before the Court in this matter, and Your Honor's findings as to the guilt of these defendants, establish that great injury had been inflicted on the people of the United States by the action of these defendants in contempt of this Court. That evidence further indicates that progressively
536 greater injury to the people of the United States will be inflicted so long as these defendants persist in their defiance of this Court.

It is recognized that under the Constitution and under all applicable statutes, cases, and rules, the punishment to be imposed upon these defendants is a matter exclusively for the Court.

Government counsel, however, in responding to Your Honor's request for recommendations, would be remiss in the discharge of their duties if they did not suggest the public interest affected by the deliberate and willful acts of the defendants.

On one hand, the one hundred and forty million people of this country, as the evidence showed and Your Honor found, depend substantially upon production of bituminous coal for their welfare, health, and safety; in fact, the very security of the Nation is directly affected.

On the other hand, the founders of this Republic, in moulding the Constitution which has made this country so great, provided that there was to be, as an independent arm of the Government, courts of law which would resolve legal questions within the scope of the federal jurisdiction. This constitutional safeguard——

The COURT. What is the constitutional safeguard? There was a noise in the room and I didn't hear it.

Mr. SONNETT. That the Constitution provided that there was
537 to be, as an independent arm of the Government, courts of laws which would resolve legal questions within the scope of the federal jurisdiction. This constitutional safeguard is basic to our democratic form of government. As Mr. Justice Marshall stated in the historic case of Marbury v. Madison: "It is, emphatically, the province and duty of the judicial department to say what the law is."

Thus, it seems to us, that in imposing sentence in this case the Court should, and we are confident the Court will, give due regard to both of these aspects of the public interest.

In arriving at a recommendation concerning sentence of the defendants the Eighth Amendment to the Constitution which, Your Honor will recall, inhibits cruel and unusual punishment and excessive fines, is, of course, pertinent.

It is respectfully recommended that, as to the defendant association, United Mine Workers of America, which I am informed has substantial cash assets, an appropriate punishment for the contempts which Your Honor has found already to have been committed by it, would be a fine of $3,500,000. Your Honor will recollect that fourteen full days have run between 2:15 p. m. on November 18, 1946, when these defendants were served with the Court's Restraining Order, and the date of their conviction. Thus, the fine, considered on a daily basis, would average $250,000 per day.

538 With respect to the individual defendant, John L. Lewis, it is recommended that this Court impose a substantial punishment, having in mind the public interests previously mentioned. It is difficult to advise Your Honor as to what, in fact, would constitute an appropriate punishment for this defendant.

In considering the recommendation which the Government should make to this Court concerning the sentence to be imposed on the defendant, Lewis, we have, of course, consulted with the Coal Mines Administration, which is in charge of the mines and is in continuous contact with the situation existing at the mines. The view of the Coal Mines Administration, in which we concur, is that, at this time, a jail sentence for the individual defendant can accomplish nothing toward restoration of coal production and might, to the contrary, place a further obstacle in the path of that objective.

The COURT. Do you mean that it might in the minds of the miners make a martyr of him? Is that what you mean, sir?

Mr. SONNETT. That is the view of the Coal Mines Administration, if the Court please.

The COURT. Is it the view of the Government in making this recommendation?

Mr. SONNETT. Yes, Your Honor.

539 The COURT. Proceed.

Mr. SONNETT. With respect to the imposition of a fine upon the individual defendant, we have some difficulty in recommending an amount because we do not know what the individual defendant's present financial condition is.

It is understood that the Constitution of the United Mine Workers of America provides that: "The salary of the President shall be $25,000 per annum;" and he "shall receive in addition to" his salary "such additional sums for additional services rendered as may be authorized and approved by" himself "together with all legitimate expenses when employed by the organization away from" his "residence."

Accordingly, it is respectfully recommended that Your Honor consider in this connection whether inquiry by the Court of the individual defendant, concerning his present financial condition, would be appropriate.

With respect to the question of any contempt by these defendants, in the future, the Court will recall that the Government's application for a preliminary injunction is before the Court——

The COURT. Well, now, let me ask you at that point.

You speak of preliminary injunction. The Court has decided in its finding of fact and conclusions of law that the defendants are guilty of irreparable injury to the entire citizenship and public,
540 irrespective of citizenship, of the United States.

Does the Government think that a permanent injunction is not appropriate at this time?

Mr. SONNETT. I am not prepared to say at this time, if the Court please, as to the Government's views.

Our thought is that the issuance of a preliminary injunction as prayed for, which application is pending before Your Honor, will fill a gap——

The COURT. Serve the same purpose, you mean?

Mr. SONNETT. Will fill the gap between now and the time of ultimate decision of this case by this Court.

The COURT. Now, is it your view that the ultimate decision of this case affects in any degree irreparable injury which present conditions impose on the people of the United States?

Mr. SONNETT. I am afraid not, sir. I hope——

The COURT. Well, it is for that reason that I asked the Government whether or not at this time a permanent injunction under the Court's finding of fact and conclusions of law is not appropriate.

Mr. SONNETT. The Government would not, most respectfully, ask for that relief at this time, if the Court please.

The COURT. Go ahead.

Mr. SONNETT. Since the defendants have not yet inter-
541 posed their answer to the complaint.

The complaint of the Government, as Your Honor will recall, asks in the usual form for such other and further relief as it may deem appropriate.

It may be that at the time of ultimate decision an injunction would be appropriate, but I am not prepared to state now whether or not the Government would make that application.

542 The COURT. Proceed, sir. Of course, the Court thinks it is perfectly clear, he would say, that, insofar as relief is concerned, preliminary injunctions have the same effect as a permanent injunction at the present time.

Mr. SONNETT. It would seem so to me, sir.

The COURT. All right.

Now, I want to ask you something else. You have suggested a fine of $350,000,000—$3,500,000, isn't it?

Mr. SONNETT. Yes, Your Honor.

The COURT. Based on the theory or based on an estimate of $250,000 a day. Now, the Court wonders, in view of the fact that this contempt may continue and may show greater or less obduracy, whether, in case the Court can take substantially the same view the Government takes as to the amount of the fine, it should not be, for purposes of illustration, $250,000 a day beginning at midnight on November 20 and continue until the further order of this Court.

Mr. SONNETT. I think, if the Court please, that the balance of my statement constitutes an answer to that; then I am finished.

The COURT. Well, maybe I made a mistake in interrupting you. Proceed.

Mr. SONNETT. With respect to the question of any contempt by these defendants, in the future, the Court will recall that the Government's application for a preliminary injunction is before the
543 Court and, it is the Government's contention, pursuant to notice already given to defendants, to move for the issuance of a preliminary injunction immediately upon the completion of the present proceedings. The Government respectfully suggests that, in the event a preliminary injunction is granted, your Honor direct the defendants to return to this court at a suitable date to be fixed by your Honor. At that time the Court, in the light of all of the facts then appearing, could consider what, if any, further action would be then appropriate.

The COURT. I will hear you, gentlemen, if you desire to be heard.

Gentlemen, we must have better order in the court. The Court cannot transact its business in this disorder.

Please suspend, Mr. Padway, until the disorder subsides.

Mr. PADWAY. May it please the Court: I have but one sentence to make with respect to the suggestions of the Government, and that is this: I shall not enter upon a discussion as to whether the fine ought to be $3,500,000 or less or more, except to say, regardless of the view the Government takes of this entire case, there is not any proof in the record to show that there has been a damage to anyone of $3,500,000, either more or less. An assumption that such money might be lost by someone, or that someone may have suffered or will suffer that
544 amount to date or in the future, or of $250,000 per day, should be based upon some competent proof in the record. There is no proof in the record to that effect.

On the basis of a civil contempt, that being remedial, the law requires, and the cases so hold, that there must be testimony in the record justifying a fine or punishment or a remedy or a repayment or reimbursement which will sustain that finding. There is no evidence to that effect in the record.

It is one thing to say that 140 millions of people or 40 millions of people or 4 millions of people will suffer some amount or some sum, and we may indulge our imaginations and assume that it is a large amount of money. But findings and the imposition of penalties cannot be imposed by imagination or upon beliefs or assumptions. There must be evidence in the record to that effect. There is none.

Now, with respect to a suggestion of that type as applicable to the criminal contempt, we say to Your Honor that that would be cruel and unusual punishment and would be in violation of the Constitution. There is no evidence to sustain that from our point of view. I do not think there is a case of record that carried with it a penalty of that nature, other than the penalty imposed some years ago by Judge Landis at Chicago, and that was, I believe, a penalty in an antitrust case of some $29,000,000. That was reversed by the
545 Court as not sustained by the record and on its face as being ludicrous.

In my opinion, there is no basis for it in the civil phase of the case, nor is there any basis for it as a criminal punishment to vindicate the dignity of this Court or to vindicate the Court's orders.

I respectfully submit that both would be in violation of the civil contempt law, because the record does not sustain it; and, on the criminal phase, because it would be in violation of the Constitution.

546 Now, we have tried to discover throughout this proceeding whether the Government assumed that the individual miners, as individuals and members of the United Mine Workers, were in contempt of court, civilly or criminally. We have never had the answer to that.

We have had a proceeding propelled in court on the theory that it may be one or the other, or both, but never had the answer with respect to the individual member of the United Mine Workers.

At one time the Court intimated, as I recall, and I think counsel agreed, that it was not a proceeding against the individual miner, or the individual miner was not in contempt since he was not directed to do anything under the order.

But a fine of $3,500,000, if the Court please, is nothing more than an imposition upon the individual miner. It is his dues, his quarters, his dollars, his nickels and dimes, and his money that would have to satisfy that sort of judgment. And for that reason I say that the imposition of that fine would be wholly inconsistent with the suggestion by the Government.

Now, the Government believes—and I don't say this facetiously or disrespectfully—by levying a fine of $3,500,000, for the period of time it alleges there has been a contempt, November 20 to date, and
547 that is the amount of money that should be imposed by way of fine and judgment, and a few more days will run and then probably the entire treasury of the United Mine Workers is taken, and its concept is that it will thereby put the United Mine Workers out of business: The Government may as well know now——

Mr. SONNETT. If Your Honor please, I object to the statement as to the Government's intention. The Government's action speaks for itself, and counsel has no right to put words in our mouth.

Mr. PADWAY. I am stating if that is the Government's intent——

The COURT. I don't think he is putting words in your mouth. He appears, as I understand, to be endeavoring to interpret your intention. Is that correct?

Mr. PADWAY. That is correct.

The COURT. Proceed.

Mr. PADWAY. And I say, if Your Honor please, that if it is the intent, or the Government believes, that the United Mine Workers will be destroyed by this fine, a fine of that magnitude or a fine that may creep along and increase in magnitude, it may as well know now that this fine will not accomplish that purpose; that the United Mine Workers will remain an organization as strong in the future, whether this fine is levied upon them or not.

548 And that is not said in defiance. That is said in justification of their belief in the justice of our position. There will always be a United Mine Workers, and it will be a strong organization, and the resentment against the Government for such a suggestion will strengthen it and make it a stronger organization than it is today.

There is a way of settling this particular controversy, but it doesn't seem to please the Government. Well, then, if the mine workers have to subject themselves to an outrageous punishment and suggestion such as this, they stand ready to submit, but with all humbleness in that submission they claim and stand firmly on the position that it is unjust, improper, outrageous, and saddled upon their heads by their own conduct which has brought this controversy before the Court.

Mr. HOPKINS. If the Court please, with the Court's indulgence, I should like briefly to supplement the statements that have just been presented to the Court by Mr. Padway upon the point to which he addressed himself, to wit, the fine which has been suggested by Government here as against the United Mine Workers, as such.

It occurred to me, Your Honor, that a spokesman of Government, in a formal proceeding such as this, alleging to act in the public interest, in reference to recommendations such as this is, in the characteristics that it carries, might well advert in his own mind and
549 in his own conscience to the fact that as a representative and a spokesman for Government they should recall that in and part of the Government, a part and parcel of it, are many, many multiplied thousands of individuals that Government seeks here to repress, restrain, and punish.

They should advert in their own mind and their own conscience, if they will but allow the light of reason to shine into the innermost recesses of them, that when they speak for Government and make recommendations for Government to Your Honor they should recall that they cannot by a sweep of the hand take away the rights of individual citizens who are themselves part of Government.

Let it be remembered, sir, now and for all time to come, that when recommendations are made by the heavy hand of Government, for the purposes apparent on their face, of punitive injury to someone that they think in their own mind does not have a legal right to take a position that they have taken here, that they are in that action undertaking to say to 600,000 coal miners, scattered in 28 States of these United States, that we, with the heavy hand of Government, with a desire to perpetuate an administrative program, and that is what it is, with a desire to punish, that they are going to undertake to lay the heavy hand upon 600,000 men who are breadwinners representing perhaps three and a half or four million common citizens of these United States.

550 We suggest, sir, that conscience and good morals alone should give Government pause to such a recommendation, inhuman as it is.

They well know, sir, that an imposition of such a penalty as this is but to fasten the hand of the Federal Government on the pay roll or the money that the man earns by the sweat of his brow 54 hours a week, 6 days a week, 9 hours a day, in the bowels of the earth, and they want to bankrupt him. Shame upon a Government. Shame upon a Government representative that would undertake to perpetrate such an outrage. I say to you, sir, that it is punitive. I say to you, sir, that there is such a thing as the Eighth Amendment to the Constitution that speaks of cruel and inhuman punishment.

Would you tear it to shreds as you recommend here in a fine upon the men that you seek to bankrupt? Let it be known that it is punitive in and of itself. Let it be known, and known to the world, that you, sir, a representative of Government, carrying out a policy or a political program of an administration come in here and recommend this excessive, this repressive, this outrageous punishment upon about four or four and a half millions of people, as represented by the United Mine Workers of America.

I say to you again, shame upon a representative of Govern-
551 ment that would reach so low as to punish a man in Pennsylvania

who is not individually in contempt of this court, under your own statement; who is not individually in contempt of this court, as I understand His Honor, in His Honor's own judgment, and yet you come here with that outrageous thing to press down upon him the crown of thorns that would take from him eventually the right to feed his family through his own earnings. Shame upon the day.

And, sir, let me say, in my judgment, paraphrasing a man who was once President of these United States, if that is the position of Government today, as outlined by you, sir, speaking for an administration political policy, then this day, sir, shall live in infamy. It shall live forever burned upon the souls and conscience, not only of these 600,000 men and their families but every man who has the spark of courage in his heart who lives under this flag.

Sir, it is outrageous enough to make a man feel that he should challenge physically the representative of Government who would make such a shameful declaration.

I denounce it with all my heart and soul. I denounce it as a day in infamy, when you come to this court and ask that a crown of thorns be placed upon a man merely to satisfy the political program of an administration.

Shame upon you. Double shame. Look into your conscience, if you can. Turn the light of justice and equity upon it and justify it, if you will.

552 That, sir, I confidently believe will be the feeling of every man affected hereby, every man who labors in these United States, and every member of his family, and every common citizen who believes that such a thing as the Constitution protects an individual as against a Government itself, and he has a right to believe it, and every individual has a right to believe that protection under the Constitution not only should be recognized by Government, but, I respectfully submit, Your Honor, that the impelling motive in that Constitution was to ask for the recognition of that right by courts as well.

We submit the cruelty, the inhumanness, the punitive motive upon the face of this proceeding condemns it within itself.

Therefore, I respectfully submit, Your Honor, that the recommendation made by the Government, from the viewpoint of the defendants, seeking to break them politically, seeking to break them financially, seeking to break them morally, is malicious, and should not be entertained by this court.

Mr. LEWIS. Mr. Hopkins, may I shake your hand? I associate myself with every word you have uttered.

Mr. HOPKINS. Sir, it is from my heart.

The COURT. Gentlemen, just a minute. Has the individual defendant anything he would like to say about his financial condition?

553 Mr. LEWIS. Sir, I don't wish to ask for mercy from your court.

The COURT. I didn't suggest that, sir. I wanted to know if you had anything you desired to say about your financial condition.

Mr. LEWIS. You ask me questions about my personal financial condition?

The COURT. If you want to make the statement. I don't ask you to make it. I say if you want to make it you have the privilege of making it, sir.

Mr. LEWIS. Sir, I have no objection to saying that I have a salary such as counsel for the Government mentioned in his statement to the Court.

When he said that I had an expense account that I decided for myself he lied to the Court. He did it deliberately because he had said he had read the Constitution, and the Constitution provides for all legitimate expenses, such as traveling, and hotel and incidentals, all audited by auditors elected by the membership in referendum vote, in secret ballot of the United Mine Workers of America.

In addition to that, sir, I have a life tenancy in a house in Alexandria, Virginia, not conveyable.

In addition, sir, I have a life tenancy in a house at my home in Springfield, Illinois, not conveyable.

554 Aside from that, I have nothing except enough money to pay my bills, but don't let that deter you from levying any amount that you wish to levy on me personally.

The COURT. Don't get in contempt of court, Mr. Lewis.

Mr. LEWIS. My dear sir——

The COURT. I extended to you the privilege of stating whether or not you desired to make any statement about your financial condition, and I advise you, sir, not to get in contempt of court.

Mr. LEWIS. Sir, I have been adjudged in contempt of court, as I understand.

The COURT. I know, but that is another contempt.

Proceed, sir, if you desire.

Mr. LEWIS. You have my statement then, sir.

The COURT. All right.

Have you anything to say, Mr. Sonnett?

555 The COURT. All right, sir.

Do you wish to say anything more?

Mr. SONNETT. Yes; I need just a few moments.

First, I think the old adage "Where there is more heat, there is less light" applies to what counsel has said.

Secondly, I am sure there must be some misunderstanding about the text of my recommendation concerning the expenses of the President of the United Mine Workers because it is quoted from the Constitution, and, as I said, and as the individual defendant said, it provides that the salary of the President shall be $25,000 per annum and he shall receive in addition to his salary such additional sums for additional services rendered as may be authorized and approved by himself, together with all the legitimate expenses when employed by the organization away from his residence.

I think the text of my statement is quite clear.

Secondly, if the Court please, I should like to invite the Court's attention to that portion of the Constitution of the United Mine Workers which provides as follows, and I read from Section 3 of Article 16, entitled "Strikes."

It reads as follows:

"Section 3: Strikes shall not be called in any unorganized field without the sanction of an international convention or the inter-

556 national executive board, and"—and this is the portion that I think is relevant—"no financial aid shall be furnished by the international union for the support of any strike until after the strike

has been in effect four weeks, unless otherwise decided by the international executive board."

The COURT. Now, gentlemen, the Court is ready to rule.

Oral conclusions of the Court

The COURT. You see, this is an unusual situation. It is not only an unusual situation but an unprecedented situation.

This is not the act of a low lawbreaker, but it is an evil, demoniac, monstrous thing that means hunger and cold and unemployment and destitution and disorganization of the social fabric; a threat to democratic government itself, and it is proper for me to say at this point that if actions of this kind can be successfully persisted in, the Government will be overthrown, and the Government that would take its place would be a dictatorship, and that the first thing the dictatorship would do would be to destroy the labor unions. That is in accordance with all history.

Now, not only is it the things that I have said, but it is this:

The Government of the United States is endeavoring,
557 through an accepted world leadership, to unite the peoples of the world in such a way as to raise the universal standards of living; to unite the peoples in good fellowship and to increase the economic power for the benefit of all people by the work that it is trying to do.

A spectacle of this kind, of course, tends to turn the Government of this country, the social fabric, of a democratic people into ridicule in the minds of the people of the world.

It seems to me that this is one of the most serious situations that has ever developed in a republic.

Now, I don't think, as I think I have said before, that anyone wants to see the unions hit a mortal blow, or any blow which will turn back the condition of labor. I think that every thinking and well-informed person understands, as I have said before, that the power of capitalism to produce is unlimited; and, aside from humanitarian considerations, aside from the fact that we are all interested in raising the standards of living of all of our people, what capitalism needs is a market, and you cannot have a market unless the people have buying power, and they cannot have buying power unless they have salaries and wages.

I cannot say whether labor has a greater friend in this country than I am or not, but I cannot conceive of it, because I have been
that friend ever since the first moment of my conscious thought
558 and opportunity to see things as they were.

Now, the Court does not see this recommendation of the Government, insofar as the union is concerned, as a desire to strike at the miners. Certainly, from the Court's standpoint, it is a desire to protect the miners' ultimate interests. Anything the Court does includes that desire.

As far as the miners themselves are concerned, it is a case of "Father, forgive them, for they know not what they do."

But unless—unless those who are undertaking to direct the affairs of this union are corrected, they will destroy the union, because if the worst should come to the worst—and it won't. I am not a

calamity—I have no desire to yell "calamity"—but if the worst comes to the worst, and it is a question of the destruction of this union to the preservation of this Republic, the Republic is going to be preserved.

Now, there is no other method of punishing an unincorporated organization except by a fine. It cannot be done by imprisonment. The Court does not think that the suggestion of the Government constitutes cruel or unusual punishment.

Certainly the action in initiating this totally unnecessary strike is costing the people, including the miners, much more than any fine that will be imposed.

559 Now, as to the individual defendant:

Of course, no humane court wants to impose punishment on anyone. On the other hand, any court that understands justice wants to impose punishments equally upon peoples of all classes.

560 As far as the individual is concerned, if he were to be punished in accordance with his offense, the Court thinks that nothing would suffice except a prison sentence, and sometimes the Court doubts if matters of expediency ought ever to govern. Sometimes the Court thinks that the spiritual values in doing exactly the right thing will, as a practical proposition in the end, result—give better results than a decision which may for the time being seem to be wise.

But I may be wrong, and this is a tremendously difficult situation and one in which the Court does not feel that it ought to disregard the advice of the Government.

The Government in this case is not merely a technical party to the suit as it would be, for instance, in a case of larceny or robbery, or a case of the United States against an individual, but in this case the United States represents all the people at a time of great national crisis, and the Court does not think it should disregard its recommendation.

The sentence of the Court insofar as to the United Mine Workers of America, an unincorporated association, will be, in accordance with the Government's recommendation, a fine of $3,500,000.

The sentence as to the individual, John L. Lewis, will be a fine of $10,000.

Mr. SONNETT. If the Court please, the Government now
561 moves for the issuance of a preliminary injunction in accordance with its notice previously served upon the defendants.

Mr. HOPKINS. Just a minute, if the Court please. This hearing, if the Court will indulge me a moment——

The COURT. Of course, sir.

Now, gentlemen, we must have order.

The DEPUTY MARSHAL. This court is in session. Please be quiet.

Mr. HOPKINS. The judgment just imposed or announced by Your Honor is upon the issue of contempt that has been upon the trial before Your Honor for several days. That being the case, sir, we respectfully submit, before any other move is attempted on the part of Government, as a matter of right, the Government should allow a motion or statement to be made to this Court, and that statement is this: that from this judgment, Your Honor, the defendants and each of them now formally and for the record give notice of appeal and we move

the Court, sir, that the judgment in this case be suspended pending perfection of the case on appeal.

That motion, we feel, is timely, it is appropriate, and properly presented to Your Honor for your ruling, sir. Your Honor, of course, bearing in mind not only the substantiality of the issues but the fact that Your Honor himself, and Government, by their own admission, from the very inception of these proceedings have stated that
562 they are unprecedented, that the questions are without parallel; the questions, therefore, both upon the law are substantial, and we submit should support the motion now made to you, sir.

Mr. SONNETT. If the Court please, if the defendants will undertake to provide security in the usual form for the payment of the fines imposed, and if the defendants will undertake to perfect their appeal by tomorrow morning, the Government would not oppose a stay until that time.

Mr. HOPKINS. If the Court please, in order to clarify what the defendants momentarily understand Government's suggestion to be, that the appeal will be perfected by tomorrow morning, the Court will, of course, bear in mind that is a physical, utter impossibility. The perfection of the appeal, the record is multiplied thousands of pages here, sir.

If they mean notice of appeal, we would, of course, undertake most expeditiously in support of our motion to file the notice of appeal most expeditiously, but if he undertakes to say "perfection of appeal," that is entirely a different matter.

Mr. SONNETT. I assumed, if the Court please, that counsel understood what I understand in the ordinary connotation of the words "perfect an appeal." I mean the filing, serving, and docketing of the case in the court above.

563 Mr. PADWAY. If the Court please, momentarily also, the defendants are not clear as to the Government's statement here that, I suppose, the Court in his own mind now has under advisement, to wit, as we understood them to say, to give the usual bond. Now, if they are requiring a bond of $3,500,000 by tomorrow morning to be given by this defendant Union, then again I say, sir, that excessive bonds certainly are not requisite; they are not at this moment required. The United Mine Workers of America cannot and would not undertake to dispossess itself of whatever financial abilities or properties it may have; upon the contrary, they would remain here, sir. But to ask the United Mine Workers, or any other organization or group of individuals, by 9 o'clock tomorrow morning, to arrange such bond, we submit is not reasonable, Your Honor. If there was any question about their fleeing the jurisdiction of this Court, or dissipating their assets, that would be another matter.

I take it that Your Honor himself would take judicial notice of the fact that the organization as such could not dispossess itself of all of its funds, even if it had such a desire, which I do not think the Government itself would impute to us.

Just a second, please.

Counsel further addresses my attention to the fact that with reference to the $10,000 bond which the Court——

564 The COURT. Ten-thousand-dollar fine.

Mr. HOPKINS. Ten-thousand-dollar fine—if we were expected to give bond of that amount, we would undertake within sometime

during the day tomorrow, to arrange that, sir. But we are not prepared and would not come into this court and allege to be prepared as against the amounts of fines which might be assessed or bonds required thereunder in the light of the proceedings of today.

Again, sir, if it were a question of the defendant fleeing the jurisdiction or the defendant undertaking to dispossess himself of any assets, that would be another matter.

The COURT. Just a minute. As far as the individual defendant is concerned, the Court feels that he should not be required to give bond this afternoon; that all we need is the assurance of counsel that he will be available tomorrow.

Mr. HOPKINS. That assurance is freely given.

The COURT. The Court feels that by tomorrow he should be able to give bond.

Mr. HOPKINS. Defense counsel freely gives that assurance, so far as the defendant himself is concerned, and would undertake to comply with it as expeditiously as possible tomorrow morning.

The COURT. The Court's difficulty, so far as the fine against the Union is concerned, is this: The Court, of course, would not
565 have imposed a fine if the Court had not been convinced it was a proper case in which to do so, if the Court had not been convinced of the legal liability which the Union has incurred.

Now, if the individual defendant in this case, gentlemen—if a prison sentence had been imposed upon him, the Court would not have allowed him bond, because the Court does not think that this is a matter to be trifled with at all. I presume the Government feels that if this fine is not going to be effective immediately, there should be a bond given. Is that your idea?

Mr. SONNETT. If the Court please, our intention was—and perhaps I did not state it clearly—to allow the defendants tomorrow to make their bond. I should like to point out that as to the defendant Union I am informed, and I believe reliably, that the cash position, in terms of cash assets of that Union, is now in the neighborhood of $13,000,000. There is no great hardship on their raising this bond.

The COURT. You mean cash bond would be satisfactory?

Mr. SONNETT. Any undertaking in usual form would be satisfactory to the Government, if the Court please.

The COURT. I am asking you specifically if the Union says now through their counsel that they will put up cash bond before 3 o'clock tomorrow of $3,500,000, is the Government satisfied?

Mr. SONNETT. Yes, your Honor.

566 Mr. PADWAY. May it please the Court: I do not understand this procedure. It is altogether foreign to my concept of judgments.

Now, insofar as the defendant Mr. Lewis is concerned, that bond will be put up tomorrow, and that will end that controversy. But insofar as the three and a half million dollars is concerned, that is—call it a judgment for the moment against the United Mine Workers. Your Honor has expressed himself—and correctly—that the United Mine Workers is an unincorporated association and cannot be put in jail.

Now—I say this most respectfully—we can do what we please with respect to putting up a bond or paying that judgment. The Government, as any other party to a suit of that nature, has a remedy:

It can enter up its judgment, can issue an execution, deliver it to the marshal, and have the marshal levy. If the United Mine Workers have sufficient cash on hand—or property—and the marshal seeks to levy upon that, there is a statute governing as to how he may do that.

If we, on the contrary, do not care to be troubled or bothered with a levy, and our judgment is recorded, so that it becomes a lien on such property as we have, it will then be up to us to put up the bond. Now, I submit that that is a matter for our determination. I will say this to your Honor——

567 The COURT. I am not undertaking to say that your view of the law should be governed by mine or anyone else's, but all I want to say, or that I have to say, is that it seems to me the law should be carried out as the Court has indicated and that this matter should not be allowed to drag. It is a serious matter, as the Court has endeavored to indicate—too serious to be trifled with—and the Court expects its judgment to be carried out.

Mr. PADWAY. Well, it is my opinion that the Court's function is now terminated, insofar as the $3,500,000 fine is concerned, except as the Government will move to collect it and will come to this Court for such aid and such writs as this Court, under the law, is authorized to make. Now, we want to determine that tomorrow. This is also serious with us. It is a big sum of money. I am not going to stand before this Court and say that we cannot put up a bond for that amount; nor will I say that we have not assets sufficient to put it up.

But suppose, if the Court please, it should be determined among counsel to go to the United States Circuit Court of Appeals tomorrow and ask for a stay even without bond; or suppose it is prepared to move before the Court on the basis of some legal question that may be raised——

568 The COURT. I have no suggestion to make to you about that or about any other courts, sir. Whatever you do is a matter for you to decide. I know my responsibility ceases with this court.

Mr. PADWAY. Just a minute, your Honor. Now, what we are going to do, so that there may be—merely to inform the Court as to what our disposition is—we are going to discuss that tonight. We shall advise our clients, the United Mine Workers and Mr. Lewis, what is the appropriate thing to do. But I see no way of the Government imposing upon us an imperative duty to do something, except with respect to the defendant Lewis, by tomorrow afternoon or the next day or the next year. There is ample authority for the Government to move, as any suitor in a case, to levy and obtain satisfaction of its judgment. Perhaps we won't put the Government to that trouble. We are not going to dispose of our assets, and in all probability—I am merely suggesting that an appropriate bond will be given; but I do not want to be put in the position that if something is going to befall us, or some subsequent penalty is going to be placed upon us because by 3 o'clock tomorrow we have not placed a bond or paid the judgment. We want to be accorded the same rights as any other suitor would be accorded with respect to a judgment now recorded in this court——

The COURT. The Court could not impose upon you any legal penalty.

Mr. PADWAY. You need not worry yourself——

569 Mr. HOPKINS. In supplement to Judge Padway, if I may—and I ask it only for the purpose of clarification—as I understand it, the Court now has before it a motion giving notice of appeal and a motion to suspend judgment pending perfection of the case.

The COURT. The Court cannot recognize, the Court cannot grant, any motion to suspend, sir.

Mr. HOPKINS. Your Honor, in that connection, I had this suggestion to make to the Court, that would perhaps be reasonable, as we see it, and it is this: The motion being before the Court, and the Court not having ruled upon it, regardless of what the Court may decide, as to whether he should sustain it or overrule it in light of the request that I think Judge Padway is undertaking to make in behalf of the miners, to which I subscribe, and that is this: as to whether or not they are able by 3 p. m. tomorrow to make such a bond, or whether or not it is the better part of wisdom for them to undertake to try to make it.

I respectfully suggest to your Honor that if your Honor would withhold the ruling on the motion to suspend judgment until 3 p. m. tomorrow, the defendants would undertake to come back at that time with a degree of clarity and definitiveness as to their ability to raise bond or the position that they occupy, and state it to the Court as of that time. We submit that that would be a reasonable request.

570 The COURT. The Court sees no reason why should the Court should suspend judgment.

What do you think?

Mr. SONNETT. If the Court please, counsel is asking for a stay of execution, which is the very question before the Court. The Government's position was that the Government would not oppose a stay of execution if, in accordance with normal and regular practice, a bond were put up. It is done every day in the week. Our thought is, Let them put up bond by tomorrow afternoon at 3 o'clock. There is no unnecessary problem here.

Mr. PADWAY. I think that will be all right. I get the position of counsel now. We can determine by tomorrow whether we will put it up or not. If we put it up, that will stay the execution. Is that correct? If we do not, then the Government can take its course. That is all right with us. We will determine that by 3 o'clock tomorrow afternoon.

The COURT. All right, gentlemen.

Mr. SONNETT. May I proceed, if the Court please, with respect to the Government's application for preliminary injunction, notice of which has previously been given to the defendants, and submit the original injunction and the notice served again yesterday, for the Court's disposition?

(Mr. Sonnett handed papers to the Court.)

The COURT. Now, gentlemen, it is the customary practice,

571 in the District of Columbia——

Mr. SONNETT. Excuse me, sir?

The COURT. The practice in the District of Columbia is that sentence shall be signed formally by the Court; A docket entry is not sufficient. If you will prepare the orders in accordance with the Court's sentences this afternoon, the Court will sign them.

Mr. SONNETT. I will so prepare them, sir.

The COURT. Is there anything further before the Court?

Mr. SONNETT. If the injunction has been granted, if the Court please, I should like to serve a copy upon counsel; and, if so, the Government has nothing further.

The COURT. You say these orders will be prepared and submitted to the Court between now and 5 o'clock?

Mr. SONNETT. They are presently being prepared, your Honor.

The COURT. All right.

(At 4:07 o'clock p. m. an adjournment of the Court was taken until Thursday, December 5, 1946, at 10 a. m.)

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Vol. III

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1946

No. 759

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION

No. 760

THE UNITED STATES OF AMERICA, PETITIONER,

vs.

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA

No. 781

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 782

JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

No. 811

UNITED MINE WORKERS OF AMERICA, AN UNINCORPORATED ASSOCIATION, AND JOHN L. LEWIS, INDIVIDUALLY AND AS PRESIDENT OF THE UNITED MINE WORKERS OF AMERICA, PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

PETITION FOR CERTIORARI IN NOS. 759 AND 760 FILED DECEMBER 6, 1946.
PETITION FOR CERTIORARI IN NOS. 781 AND 782 FILED DECEMBER 12, 1946.
PETITION FOR CERTIORARI IN No. 811 FILED DECEMBER 21, 1946.
CERTIORARI GRANTED IN NOS. 759 AND 760 DECEMBER 9, 1946.
CERTIORARI GRANTED IN NOS. 781 AND 782 DECEMBER 16, 1946.
CERTIORARI GRANTED IN NO. 811 DECEMBER 23, 1946.